Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 7/30/2013)

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)

DECISION ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY

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DECISION ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY

Summary

This decision adopts rules and regulations for New Online Enabled Transportation Services, referred to hereafter as a Transportation Network Company[1] (TNC), to ensure that public safety is not compromised by the operation of this new transportation business model. TNCs are not just Lyft, SideCar, InstantCab, and UberX[2]. This Commission defines a TNC as a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles.[3] Among other requirements established in this decision, we

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[1] In the Rulemaking, we referred to these companies as New Online-Enabled Transportation Services (NOETS). We are changing the acronym to Transportation Network Company (TNC) for ease of use.

[2] The Commission's Safety and Enforcement Division issued cease and desist letters and $20,000 citations against Uber, Lyft, and SideCar for operating without authority and other violations of state law. However, in 2013, the Safety and Enforcement Division entered into settlement agreements intended to ensure the public safety of both riders and drivers with Uber, Lyft, and SideCar, allowing the companies to operate while the Commission's TNC rulemaking is underway. http://www.cpuc.ca.gov/PUC/transportation/Passengers/CarrierInvestigations/.

[3] There are eleven exemptions to the Passenger Charter-party Carriers' Act contained in Public Utilities Code § 5353. Our definition of a TNC does not in any way usurp those existing exemptions. For example, one of the exemptions is passenger vehicles carrying passengers on a non-commercial enterprise basis. This exception has been defined by the Commission to mean non-profit organizations. See D.91.-06-025 ("The term 'noncommercial enterprise basis' in PU Code Section 5353(f) includes operations conducted on a not-for-profit, tax-exempt basis, as authorized by federal or state law."). Another exemption is the rideshare exemption itself, which exempts: Transportation of persons between home and work locations or of persons having a common

Footnote continued on next page

require each TNC (not the individual drivers) to obtain a permit from the California Public Utilities Commission (Commission), require criminal background checks for each driver, establish a driver training program, implement a zero-tolerance policy on drugs and alcohol, and require an insurance policy that is more stringent than our current requirement for limousines.

This decision orders a second phase to this proceeding to review the Commission's existing regulations over limousines and other charter-party carriers to ensure that the public safety rules are up to date, and that the rules are responsive to the needs of today's transportation market. When the second phase is complete, the Commission will initiate the Commission's resolution process to update the General Order (GO) 115 and 157 series to include the new regulations relating to the charter-party carrier subclass of TNC.

Finally, the Commission is aware that TNCs are a nascent industry. Innovation does not, however, alter the Commission's obligation to protect public safety, especially where, as here, the core service being provided -- passenger transportation on public roadways -- has potential safety impacts for third parties and property. The Commission is familiar with and confident in its ability to protect public safety in the face of rapid technological change. Consequently, while the Commission adopts these rules and regulations, it will also look for further guidance from the legislature should there be a need for

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work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

formal legislation to provide an overall legislative scheme for regulating this new industry.

1. Procedural History

On December 20, 2012, the Commission opened this Rulemaking in order to determine whether and how TNC services arranged through apps such as Uber, SideCar, and Lyft might affect public safety.[4]

In the Order Instituting Rulemaking (Rulemaking), the Commission stated that:

> We initiate this proceeding to protect public safety and encourage innovators to use technology to improve the lives of Californians.[5] 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 invites 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.[6]

The Commission sought comment on issues including: how the Commission's existing jurisdiction should be applied to businesses such as Uber, SideCar, and Lyft; the consumer protection and safety implications of the new

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[4] The Commission's Safety and Enforcement Division issued cease and desist letters and $20,000 citations against Uber, Lyft, and SideCar for operating without authority and other violations of state law. However, in 2013, the Safety and Enforcement Division entered into settlement agreements intended to ensure the public safety of both riders and drivers with Uber, Lyft, and SideCar, allowing the companies to operate while the Commission's TNC rulemaking is underway. http://www.cpuc.ca.gov/PUC/transportation/Passengers/CarrierInvestigations/.

[5] R.12-12-011, Rulemaking at 1.

[6] R.12-12-011, Rulemaking at 2.

methods for arranging transportation services; whether and how the new transportation business models differ from longstanding forms of ridesharing; and the new transportation business models' potential effect on insurance and transportation access.

On January 28, 2013, opening comments were filed by: Willie J. Brown, Jr, Luxor Cab Company, Greater California Livery Association, San Francisco Airport Commission, International Association of Transportation Regulators, Uber Technologies, Personal Insurance Federation of California, Center for Accessible Technology, Zimride, TransForm, SideCar Technologies, San Francisco Municipal Transportation Agency, Ed Healy, United Taxicab Workers, San Francisco Cab Drivers Association, Taxicab Limousine and Paratransit Association, and Taxicab Paratransit Association of California.

On February 11, 2013, reply comments were filed by: Electronic Frontier Foundation, International Association of Transportation Regulators, United Taxicab Workers, Zimride, Center for Accessible Technology, Luxor Cab Company, San Francisco Municipal Transportation Agency, Transform, SideCar Technologies, Taxicab Paratransit Association of California, Ed Healy, Willie J. Brown, Jr., eRideshare, and San Francisco Cab Drivers Association.

On February 15, 2013, the Commission held a Prehearing Conference in order to, *inter alia*, establish the service list, determine the positions of the parties, identify issues for inclusion in the April 2, 2013 Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling (Scoping Memo), and discuss the procedural schedule. Prehearing Conference Statements were filed by: United Taxicab Workers, International Association of Transportation Regulators, Willie J. Brown, Jr., Transform, Taxicab Paratransit Association of California, San Francisco Municipal Transportation Agency, Zimride, Uber

Technologies, Center for Accessible Technology, and San Francisco Airport Commission.

On March 7, 2013, the Administrative Law Judge (ALJ) issued a notice to the parties via e-mail, setting a workshop schedule and directing parties to file workshop statements answering specific questions about the following issues: TNC operations; jurisdiction; public safety; insurance; background checks; accessibility and equal access; and how Commission regulations may enhance or impede access to public roadways.

On April 2, 2013, the assigned Commissioner and ALJ issued the Scoping Memo which established the scope and schedule of the Rulemaking, categorized the Rulemaking as quasi-legislative, and determined that hearings were not necessary.

On April 3, 2013, workshop statements were filed by: Willie L. Brown, Jr., The Utility Reform Network, San Francisco Cab Drivers Association, Zimride, SideCar Technologies, TransForm, San Francisco Airport Commission and San Francisco Municipal Transportation Agency, Uber Technologies, Taxicab Paratransit Association of California, United Taxicab Workers, Luxor Cab Company, and Center for Accessible Technology.

On April 10 and 11, 2013, the Commission held a workshop to facilitate dialogue among the parties on issues including: jurisdiction, public safety, accessibility, insurance, and proposed modifications for California statutes or Commission regulations. Two parties, TransForm and Taxicab Paratransit Association of California, took notes during the workshop and prepared a draft report summarizing all parties' positions as articulated during the workshop. Parties reviewed the draft report to ensure that their positions were captured

correctly, and on May 17, 2013, TransForm and Taxicab Paratransit Association of California filed the final workshop report with the Commission.

On April 25, 2013, Center for Accessible Technology filed a motion requesting an additional round of comments on the issues raised in the Scoping Memo. On May 10, 2013, the ALJ granted the motion, determining that opening comments were due on June 3, 2013 and reply comments were due on June 10, 2013.

On July 17, 2013, the California Highway Patrol (CHP) filed its comments.[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 invites 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.[8]

2. Jurisdiction

As noted in the Rulemaking,[9] the Commission's jurisdiction over charter-party carriers is clear. Nevertheless, new technology and innovation require that the Commission continually review its regulations and policies to ensure that the law and the Commission's safety oversight reflect the current state of the industry and that these regulations are just and fair for all passenger carriers.

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[7] R.12-12-011, Rulemaking at 1.

[8] R.12-12-011, Rulemaking at 2.

[9] R.12-12-011, Rulemaking at 2-3.

The Commission sought comment on how the Commission's existing jurisdiction pursuant to the California Constitution and the Public Utilities Code (PU Code) should be applied to businesses like Uber, Sidecar, and Lyft and the drivers employed or utilized by these entities. The Commission also sought comment on whether any existing legislation should be modified or if new legislation should be enacted.

2.1. Comments on the Rulemaking

The parties that filed opening comments all addressed jurisdiction in varying degrees. The summaries of the positions of parties below capture all the positions that have been voiced in this Rulemaking on the subject of jurisdiction.

The CHP asserts that TNCs fall under existing Commission jurisdiction, because the CHP views TNCs as for-hire passenger carriers.[10] The CHP views a donation for transportation service equivalent to direct compensation, because the intent is to conduct a for-hire operation.[11]

Luxor Cab asserts that these businesses should be regulated the same as all other passenger carriers. Furthermore, it asserts that the presence of new technology for summoning a car does not in any way change the nature of the business that they are engaged in.[12]

Greater California Livery Association (GCLA) asserts that, based on their real-world experience, these transportation technology companies should be

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[10] California Highway Patrol comments filed on 07/17/13 at 1-2.

[11] California Highway Patrol comments filed on 07/17/13 at 1.

[12] Luxor Cab Opening Comments filed on 01/28/13 at 1.

subject to the same Commission regulation and enforcement as charter party carriers.[13]

Uber suggests that the Commission does not currently have jurisdiction over Uber because Uber is not a charter-party carrier within the meaning of PU Code § 5351 *et seq*. Further, Uber advocates against extending the Commission's jurisdiction to companies like Uber because: 1) no public policy or public interest is advanced by such an extension of the law; 2) the Legislature has recently enacted new legislation exempting Internet Protocol-enabled (IP-enabled) services from regulation by the Commission; and 3) extending Commission regulation to Uber would conflict with Federal and State policies promoting further development of, and innovation in, information services provided over the Internet by prohibiting regulation of information services providers.[14]

TransForm acknowledges that the Commission has jurisdiction over charter-party carriers not meeting the statutory exemptions for taxicabs and work-related ridesharing, and has exercised this jurisdiction to ensure consumer protection and safety for traditional chartered transportation services.[15] TransForm further asserts that the Commission should exercise its jurisdiction carefully so that it is applied in a way that allows growth of technology-enabled ridesharing services rather than eliminating an innovative tool to help address transportation access and climate change. The Commission should recommend to the legislature any necessary modifications to existing statutory exemptions to

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[13] GCLA Opening Comments filed on 01/28/13 at 2.

[14] Uber Opening Comments filed on 01/28/13 at 5.

[15] TransForm Opening Comments filed on 01/28/13 at 2.

create a coherent regulatory framework that allows for ridesharing services to grow, while ensuring that consumer protection and safety is addressed. At the same time it is important for high-volume services to consult and coordinate with local cities, counties, and public transit agencies to avoid potential impacts.[16]

The San Francisco Municipal Transportation Authority (SFMTA) says state law defines a charter-party carrier as any "person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state."[17] Drivers affiliated with businesses like Lyft and Sidecar drive passengers to destinations of their choice in exchange for payment. These businesses collect payments from passengers, share revenue with the drivers, and manage the exchange of information between passengers and drivers to facilitate interactions and commerce between drivers and passengers. SFMTA goes on to say that although certain transportation providers that would otherwise meet the definition of a "charter-party carrier" are exempted by statute from the Commission's regulatory oversight, services like Lyft and SideCar do not fall within any of these exemptions.[18]

SideCar asserts that it is neither a charter-party carrier nor a transportation service, but rather it is a technology platform that facilitates exempt ridesharing

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[16] TransForm Opening Comments filed on 01/28/13 at 4.

[17] SFMTA Opening Comments filed on 01/28/13 at 2, citing PU Code § 5360.

[18] SFMTA Opening Comments filed on 01/28/13 at 2.

and, to that extent, should be exempt from Commission jurisdiction under PU Code § 5353(f) and (h).[19]

Lyft asserts that the Commission should solely focus on regulation necessary to fulfill its responsibility for public safety.[20] Lyft cautions the Commission to not force-fit existing regulations onto such an emerging industry.

International Association of Transportation Regulators (IATR) recommends that the Commission should conduct further investigation to determine whether these TNCs operate without a profit. IATR believes that companies that operate for-profit, and that use smartphone applications that directly connect passengers to drivers, clearly fall under the Commission's definition of a charter-party carrier, and should be subject to all the existing regulations.[21]

Taxicab Paratransit Association of California asserts that TNCs operate as on demand services and therefore fail to comply with the legal requirements for operation as a Transportation Charter Party (TCP).[22]

2.2. Discussion

California law currently recognizes and regulates three modes of passenger transportation for compensation: taxi services, regulated by cities and/or counties; and charter-party carrier services, and passenger-stage companies, regulated by the Commission. In recent years, the communications revolution in wireless service, smartphones, and apps has further facilitated the

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[19] SideCar Opening Comments filed on 01/28/13 at 9.

[20] Zimride (Lyft) Opening Comments filed on 01/28/13 at 4.

[21] IATR Opening Comments filed on 01/28/13 at 3.

[22] TPAC Opening Comments filed on 02/04/13 at 5.

development and adoption of passenger transportation for compensation to a point where passengers seeking rides can be readily connected with drivers willing to provide rides in private vehicles. This development in passenger transportation for compensation, referred to in this proceeding as TNCs and associated with companies including UberX, Lyft, and Sidecar, does not fit neatly into the conventional understandings of either taxis or limousines, but that does not mean that this Commission's responsibility to public safety in the transportation industry should be ignored and/or left for individual companies to control.

2.2.1. Neither the Federal Telecommunications Act of 1996 nor Public Utilities Code Section 710 Exempts TNCs from State Jurisdiction

We reject Uber's assertion that TNCs are nothing more than an application on smart phones, rather than part of the transportation industry. Uber is the means by which the transportation service is arranged, and performs essentially the same function as a limousine or shuttle company dispatch office. Accordingly, Uber is not exempt from the Commission's jurisdiction over charter-party carriers. Nonetheless, because of the novelty of these assertions, along with the possibility that they may arise in other Commission proceedings, we will address Uber's jurisdictional arguments here.

As Uber notes in its comments, the 1996 Federal Telecommunications Act[23] (Act) distinguished between "telecommunications" and "information services. In so doing, Congress codified the Federal Communication's historical determination that "basic" services were to be treated differently from

[23] P.L. No. 104-104, 110 Stat. 56 (1996).

"enhanced" services. Uber seeks to edify the Commission further with a detailed discussion of the Vonage case, in which the FCC concluded that nomadic Voice over Internet Protocol (VoIP) service is a purely interstate service, not subject to state jurisdiction. Uber recounts a California Court of Appeal case involving actions brought against eBay, where the court held eBay immune from state causes of action.

In addition, Uber notes passage of SB 1161 in 2011, which codified §§ 239 and 710 of the PU Code. Section 710 prohibits the Commission from "exercising any regulatory jurisdiction" over VoIP or IP-enabled services, subject to a delegation of federal authority, other express statutory authority, or exceptions contained in § 710.

While Uber's citations are informative, they are beside the point as none of the cited statutes or precedents prevent this Commission from regulating passenger transportation over public roadways. Specifically, we reject Uber and SideCar's argument that TNCs are simply providers of IP-enabled services and therefore exempt from our jurisdiction. We find this argument to be factually and legally flawed and, therefore, do not accept that the method by which information is communicated, or the transportation service arranged, changes the underlying nature of the transportation service being offered.

First, the Commission is not attempting to enact rules that would impose regulations on the smart phone application used to connect passengers with drivers. Instead, the Commission is attempting to promulgate rules that would govern the transportation service itself. Second, we do not believe that this Commission loses its jurisdiction over transportation services simply because a smart phone application is used to facilitate the transportation service. Nothing Uber has cited in California or federal law would mandate that that result based

on the facts here. Indeed Uber and Sidecar's position would effectively obviate the Commission's authority under PU Code § 5371.6(a) to prevent TCPs from operating illegally in order to protect the public and prevent unfair competition:

> The Legislature finds and declares that advertising and use of telephone service is essential for charter-party carriers of passengers to obtain business and to conduct intrastate passenger transportation services. Unlawful advertisements by unlicensed charter-party carriers of passengers has resulted in properly licensed and regulated charter-party carriers of passengers competing with unlicensed charter-party carriers of passengers using unfair business practices. Unlicensed charter-party carriers of passengers have also exposed citizens of the state to unscrupulous persons who portray themselves as properly licensed, qualified, and insured charter-party carriers of passengers. Many of these unlicensed charter-party carriers of passengers have been found to have operated their vehicles without insurance or in an unsafe manner, placing the citizens of the state at risk.

Similarly, the Legislature has created additional safeguards in Government Code § 53075.8(b)(1) that allow for the termination of a taxicab's telephone service if the taxi is operating without proper authority:

> The Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare. Therefore, local agencies should take enforcement action, as specified in this section, to disconnect telephone service of unauthorized taxicab operators who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme

Court in Goldin v. Public Utilities Commission (1979) 23 Cal. 3d 638.

We deem it is inconsistent with our grant of authority over transportation services to be barred from regulating a transportation service provided by TNCs based on the means of communication used to arrange the service.

Moreover, to date neither the Federal Communications Commission (FCC), nor a court of higher jurisdiction, has ruled that this Commission, or any other state commission, is precluded by the Act from regulating TNCs. It is interesting to note that the Federal Trade Commission (FTC) has intervened in state proceedings by filing comments but has not, to date, gone so far as to claim that state-regulatory efforts to assert jurisdiction over TNCs is preempted by the 1996 Federal Telecommunications Act. For instance, on June 7, 2013, the FTC sent a letter to Jacques P. Lerner, General Counsel of the District of Columbia Taxicab Commission that offered comments in the proposed TNC-related rulemaking. Previously, the FTC filed comments in TNC-related rulemaking proceedings in Alaska[24] and Colorado.[25] Tellingly, neither the FTC nor the FCC has claimed that the state regulatory bodies are preempted from promulgating regulations to deal with the growing TNC business.

In response to the proposed decision, Uber continued its invalid thinking in stating that Uber is more like Google PowerMeter. In its August 19, 2013 comments to this decision, Uber states that in the same way that Google did not

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[24] FTC comments dated April 19, 2013 to the Honorable Debbie Ossiander Concerning AO NO. 2013-36 Regarding the Regulatory Framework for the Licensing and Permitting of Taxicabs, Limousines, and Other Vehicles for Hire in Anchorage, Alaska.

[25] FTC comments dated March 6, 2013 to the Colorado Public Utilities Commission *In The Matter of the Proposed Rules Regulating Transportation by Motor Vehicle*, 4 Code of Colorado Regulations 723-6.

become an energy utility by developing the Google PowerMeter software application, Uber does not become a transportation company by developing the Uber Software Application. The major difference between Uber and Google PowerMeter is that Uber controls the financial transaction between the customer and the company. Uber receives the customer fare and then pays out the driver minus its cut. Google PowerMeter did not take any money from the customer. Google PowerMeter was a tool that allowed an electricity consumer to view his or her electricity usage. The data displayed by Google PowerMeter was measured by a measurement device installed by the customer with his or her consent. The goal of the Google PowerMeter was to inform the energy customers of their energy use, which could help the consumer identify ways to save energy. The customer was not charged a fare, and Google did not generate other revenues from the tool. If all Uber did was show customers maps of available cars, without giving them a way to book a ride and without controlling or taking a cut of the fare, then the analogy might be more appropriate.

The Commission elects to use a more appropriate analogy involving Google. Google Search is an app and a software platform, and uses that software to provide a product: search listings. In 2011, Google agreed to pay a settlement of $500 million for allowing fraudulent pharmaceutical advertisements.[26] In the case of pharmaceutical listings, Google Search was connecting people with products that were harmful or fraudulent, and which represented a threat to public safety. The people selling the illegal drugs had to be held accountable, but so did the software platform that connected people with the illegal drugs. The

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[26] *See* http://www.wired.com/threatlevel/2013/05/google-pharma-whitaker-sting/all/.

same is true with Uber. The Uber brand is now a trusted brand for car service. It is expected that a passenger requesting an Uber car will get a black town car or something of similar stature. It is expected that this service may cost more, but it is a higher service with professional drivers. Passengers will call Uber more frequently because of its name recognition alone. Uber by its name alone is selling a type of car service. Because Uber is profiting from this service it should also be held responsible if the driver that it hires is negligent or not applying Uber safe practices. The same way Google was held responsible for allowing fraudulent advertisements is the same reason why Uber should be held responsible for its drivers.

Uber argues that the taxi cabs and limousines that arrange rides on the Uber platform are already regulated and insured, and that no additional regulation of Uber itself is necessary to protect the public interest. Perversely, however, the fact that regulated forms of transportation arrange rides through the Uber platform injects a considerable degree of uncertainty into the question of whether a taxi cab or limousine's insurance coverage would to cover a claim. For example, if a limousine driver uses Uber's method of fare calculation and billing rather than the method otherwise required by TCP rules or limousine company policy, in the event of an accident the limousine's existing insurance policy may deny a claim on the grounds that the limousine had stopped operating, strictly speaking, as a limousine. In this same hypothetical accident, based on Uber's comments in this proceeding, we anticipate that Uber would deny that it has any obligation to insure the parties injured in the accident, on the grounds that Uber is an app and the limousine driver was already insured.

Until all of these insurance issues are conclusively settled, whether by industry practice or by legislation, there is a real possibility that parties suffering

losses in an accident would find that there is no insurance available to cover their claim.

Due to the considerable uncertainty that exists concerning the insurance coverage applicable to rides (other than UberX rides) arranged through the Uber app, and the threat to public safety and well-being created by this uncertainty, the Commission is strongly inclined to require Uber to obtain a TCP permit in order to continue operating in California. As discussed elsewhere in this Decision, the Commission intends to open a second phase of this proceeding (Phase II) to consider the rules applicable to TCPs in California. In order to ensure the greatest possible evidentiary record, the Commission would prefer to leave all TCP-related issues, including Uber's potential TCP status, to Phase II. However, the Commission will not allow the uncertainty regarding Uber's insurance to persist during the pendency of Phase II; unless Uber is able to demonstrate to the Commission within 30 days of the issuance of this decision that it maintains commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers in transit to or during trips arranged through the Uber app, the Commission reserves the right to require Uber to obtain a TCP permit through Commission resolution.

2.2.2. TNCs Transport Passengers for Compensation

Public Utilities Code § 5360 states in part:

> Subject to the exclusions of Section 5353, "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state.

We reject the arguments made by Lyft and SideCar that any payment for rides arranged through their apps is voluntary and find that TNCs are engaged

in the transportation of persons for compensation. Although the phrase "for compensation" is not defined by PU Code § 5360, the plain-meaning interpretation of PU Code § 5360 in D. 69231 (June 15, 1965) informs our decision in this proceeding.

In D.69231, C.F. Stahl was ordered to cease and desist transporting passengers to his skate arena business until he obtained his TCP certificate. While the record was unclear as to whether Stahl would charge a fee for the proposed service, the Commission determined that even if the transportation was for free, "transportation furnished by business enterprises without charge is also 'for compensation' if the organization sponsoring the trip receives a business benefit."[27] The Commission reiterated this interpretation in D.81805 (August 28, 1973) where we reasoned that "it was not necessary for the staff to prove that respondent actually received money consideration for the transportation in question. It is enough that he received an economic benefit."[28]

Clearly each TNC is receiving either an economic benefit or a business benefit. At a minimum, they are receiving increased patronage with the growth of their businesses. This possibility was an important factor for the Commission in rendering its decision in D.69231 that Stahl's status was a TCP: "Applicant

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[27] D.69231 at 409.

[28] D.69231 at 493. The Commission has reached a similar conclusion with respect to free service provided by PSCs, finding that the service was for compensation. (*See Peter J. Van Loben Sels (Valley Transit Lines) v. B.J. Smith et al., copartners (Cal. Transit Lines)*, 49 Cal. P.U.C. 290 (1950); and *Richard Chala v. Morris Gordon of Gordon's Outlet Store, et al.,* Decision No. 57356 in Case No. 6152 (1958), unreported. Our reasoning is also similar the Legislature's when it added Section 17510.1 to the Business and Professions Code: "As used in this article, 'sale' shall include a gift made with the hope or expectation of monetary compensation." Thus, a donation or a gift can still be considered a form of compensation.

would receive a business benefit and compensation from the increased patronage for his skate arena business resulting from the advertising."[29]

2.2.3. TNCs Operate on a Prearranged Basis

Unlike taxi cabs, which may pick up passengers via street hails, PU Code § 5360.5 requires that charter party carriers operate on a prearranged basis.

We find that TNCs operate on a prearranged basis. PU Code § 5360.5 does not define "prearranged," and we are reluctant to impose a minimum time requirement as some other jurisdictions have done.[30] Instead, we are guided by the plain meaning of "prearranged" as something arranged in advance, which has been our custom and practice in interpreting "prearranged" at the Commission. For example, our information packet for prospective TCP applicants says that all transportation performed by TCPs must be arranged beforehand, and the driver must have a completed waybill in his or her possession at all times during the trip.[31]

We believe TNCs satisfy the "prearranged" requirement two ways: first, before a passenger can request a ride, the passenger must download the app and agree the TNC service agreement. Examples can be found in the TNC written

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[29] 409.

[30] For example, the Washington Administrative Code requires that for-hire vehicles must be prearranged for at least 15 minutes. (Washington Rev. Code Section 308-83-200.) The International Association of Transportation Regulators issued proposed model regulations for smartphone applications in the for-hire industry and suggested that the "prearranged or prearrangement" should require "a minimum of thirty (30) minutes between the request for transportation service and the arrival of the vehicle at the transportation origin location."

[31] Basic Information for passenger carriers and applicants (Rev. /28/11) issued by the Transportation License Section of the Commission.

terms of use.[32] Uber makes our point clearly in its description of its service that "persons who use the Uber App to request *prearranged transportations* have sole discretion over whether or not to use the Uber App, if ever."[33] Second, for a particular trip, the passenger must input information regarding current location and trip destination. A TNC driver cannot be hailed like a cab where no information is exchanged until the passenger enters the vehicle. As such, each TNC is offering transportation on a "prearranged" basis.

Prearrangement has typically been verified through the use of a waybill. TCPs must possess a waybill for each ride that includes information on the driver's name, vehicle license plate number, and time and date when the charter was arranged, and similar information.[34] Pursuant to more recent legislation, waybills may be kept in an electronic format beginning January 1, 2014.[35] In order to comply with the applicable statutes and regulations, all TNC drivers must be able to prove that a ride was matched on the TNC software application as evidence of prearrangement. In other words, information in the software application must be the equivalent of an electronic waybill.

2.2.4. The Commission Has the Jurisdiction and the Duty to Establish Regulations Governing the Provision of TNC Services

Based on the record in this proceeding, and as the Rulemaking originally made clear, this Commission regulates charter party passenger carriers pursuant

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[32] *See* Exhibits B (Uber), D (SideCar), F (Lyft), and H (Tickengo) to the Workshop brief, filed on April 3 by TPAC.

[33] Pre-Workshop Statement, 4, filed on April 3, 2013 by Uber. (*Italics* added.)

[34] GO 157-D, Part 3.01.

[35] *See* PU Code § 5381.5.

to Article XII of the California Constitution and the Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act). Section 5360 states in part:

> Subject to the exclusions of Section 5353, "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state.
>
> Section 5381 states in part:
>
> …(t)he commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things…necessary and convenient in the exercise of such power and jurisdiction.

We are persuaded by the comments made by the CHP, TransForm, and to a certain extent Lyft. Our focus is public safety and secondarily ensuring that regulations reflect changing technology and ways of doing business to ensure that rules are in place to improve the lives of Californians. We agree with the CHP that a "donation" for passenger transportation service is equivalent to direct compensation for the service provided, and the intent is to conduct a for-hire operation which falls under the jurisdiction of this Commission. TransForm states in their comments in part:

> TransForm believes that all people deserve affordable, safe, and easy access to jobs, housing, services, and nature on foot, bicycle, or public transportation. TransForm envisions that in the future transportation will be redefined in terms of access and sustainability, and residents will be able to quickly get where they want to go in ways that fully meet their needs, whether these needs are health, happiness, saving time, or saving money. Our transportation system will provide the public with choices that amount to a system that is exceptional and state-of-the-art.

> TransForm believes that rideshare services have the potential to advance several California policy goals, including improving transportation access, reducing greenhouse gas emissions, reducing vehicle miles travelled, and reducing congestion. When the legislature passed the landmark transportation law SB 375 in 2008, the legislature found that "[w]ithout improved land use and transportation policy, California will not be able to achieve the goals of AB 32," the Global Warming Solutions Act. The legislature also found that the transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California, the largest of any sector, with automobiles and light trucks alone contributing almost 30 percent. The California Air Resources Board, in setting regional greenhouse gas reduction targets, adopted targets requiring each region's Sustainable Communities Strategy and Regional Transportation Plan to achieve specified reductions in the transportation sector by the years 2020 and 2035.[36]

We agree with TransForm with respect to the above two points. Additionally, Lyft has been the only TNC that has acknowledged that safety is not only a priority, but there should also be some overarching rules and regulations. We applaud Lyft for its leadership in this area and we certainly agree with Lyft in this area.

For the reasons discussed *supra*, we find that TNCs are charter-party passenger carriers, and therefore we will exercise our existing jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act) as well as the fact that Commission has very broad powers under PU Code § 701 which suggests

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[36] TransForm Opening Comments filed on 01/28/13 at 1.

that the Commission has the ability (via a rulemaking process) to develop new categories of regulation when a new technology disrupts an existing industry. In this decision, under the broad grant of authority pursuant to PU Code §§ 5381 and 701, we create the category of Transportation Network Company (TNC) to accompany the existing category of TCP.[37] Again, a TNC is defined as a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles. The primary distinction between a TNC and a TCP is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose. To that end, a TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicles. With this definition in mind, the Commission's finds that Uber (in contrast to UberX) is not a TNC. Uber connects riders with drivers who do not drive their own personal vehicle, but typically operate in town cars or limousines, which the driver may often as well use to transport customers for another limousine/town car company. As such, Uber does not meet the definition of a TNC. As discussed elsewhere in this Decision, the Commission intends to open a second phase of this proceeding (Phase II) to consider the rules

[37] The Commission has previously developed new types of transportation services with unique rules relevant to that specific form of transportation. Namely, in D.97-07-063, the Commission "adopt[ed] rules for a new niche form of passenger stage corporation (PSC) that specializes in the common carriage of infants and children . . ." The Commission required such carriers to apply for a PSC permit, but developed a special set of rules applicable to these forms of transportation. D.97-07-063 stated, "This is a restricted class of PSC carrier not previously designated by this Commission, and special requirements need to be imposed on these carriers." In creating these new rules, the Commission relied on its broad power under § 701, and the Passenger-Stage Corporation provisions of the Public Utilities Code § 5351.

applicable to TCPs in California. In order to ensure the greatest possible evidentiary record, the Commission would prefer to leave all TCP-related issues, including Uber's potential TCP status, to Phase II. UberX, however, does meet the TNC definition and should apply for a TNC license.

A company or individual wishing to provide transportation or facilitate transportation of passengers can choose to either get a TCP certificate/permit or a TNC permit.[38] Further, TNCs need not apply for a certificate of public convenience and necessity pursuant to PU Code § 5371. TNCs are exempted from this requirement, as are many charter-party carriers regulated by the Commission, pursuant to PU Code § 5384(b), which authorizes the Commission to issue permits to passenger carrier operations who use only vehicles with seating capacities of under 15-passengers. TNCs will only be granted to companies utilizing smart phone technology applications to facilitate transportation of passengers in the driver's personal vehicle.

Within 45 days after the effective date of this Decision, the Commission's Safety Enforcement Division (SED) will post a TNC Application Packet on its website, and TNCs currently operating in California are required to file their TNC Applications with SED 60 days thereafter if they wish to continue operating. The TCP requirements are already in place, although as suggested *supra* the Commission will open a second phase to this Rulemaking to update those rules and regulations to ensure that safety requirements are up to date. Based on the record of this proceeding and the safety and other concerns expressed by parties, the settlement agreements that were entered into with Lyft,

[38] There is also a third choice and that is to apply for a taxicab license.

SideCar, and Uber, and our existing TCP rules we have created the following rules and regulations for all TNCs. The following rules and regulations shall be applied for all TNCs effective immediately:

Safety Requirements

a) TNCs shall maintain commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving TNC vehicles and drivers in transit to (after being matched through a TNC's platform) or during a TNC trip. The insurance coverage shall be available to cover claims regardless of whether a relevant TNC driver maintains insurance adequate to cover any portion of the claim.

b) TNC drivers shall be required to provide proof of both their personal insurance and the commercial excess liability insurance in the case of an accident.

c) TNCs shall perform a criminal background checks on each TNC driver before the driver begins offering service. In order to protect public safety, any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, acts of violence, or acts of terror shall not be permitted to provide TNC services.

d) TNCs shall institute a zero tolerance intoxicating substance policy with respect to drivers as follows:

    1. The TNC shall include on its website, mobile application and riders' receipts, notice/information on the TNC's zero-tolerance policy and the methods to report a driver for whom the rider reasonable suspects was under the influence of drugs or alcohol during the course of the ride.

2. The website and mobile application must include a phone number or in-app call function and email address to contact to report the zero-tolerance complaint.
3. Promptly after a zero tolerance complaint is filed, the TNC shall suspend the driver for further investigation.
4. The website and mobile application must also include the phone number and email address of the Commission's Passenger Section: 1-800-894-9444 and CIU_intake@cpuc.ca.gov.

e) TNCs shall obtain each TNC driver's driving record before the driver begins providing service and annually thereafter. Drivers with convictions for reckless driving, driving under the influence, hit and run, or driving with a suspended or revoked license shall not be permitted to be a TNC driver. Drivers may have a maximum of two points on their driving records for lesser offenses, e.g., equipment problems, speeding, or child safety seat violations.

f) TNCs shall establish a driver training program or mentor 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 annual basis the number of drivers that became eligible and completed the course.

g) TNC drivers must possess a valid California driver's license, be at least 21 years of age, and must provide at least one year of driving history before providing TNC services.

h) TNCs may only use street-legal coupes, sedans, or light-duty vehicles including vans, minivans, sport utility vehicles (SUVs) and pickup trucks. Hatchbacks and convertibles are acceptable.

i) TNC drivers are prohibited from transporting more than 7 people, including the driver, on any given ride.

j) The app used by a TNC to connect drivers and passengers must display for the passenger: 1) a picture of the driver, and 2) a picture of the car the driver is approved to use.

k) TNC vehicles shall not be significantly modified from factory specifications, e.g., no "stretch" vehicles.

l) TNCs must inspect all vehicles and maintain proper documentation of such inspections. TNCs must conduct a 19 point inspection:

1. Foot brakes (check stopping: at 20 mph, a vehicle must be capable of stopping within 25 feet);
2. Emergency brakes (engine stall test);
3. Steering mechanism;
4. Windshield;
5. Rear window and other glass;
6. Windshield wipers;
7. Headlights;
8. Tail lights;
9. Turn indicator lights;
10. Stop lights;
11. Front seat adjustment mechanism;
12. Doors (open, close, lock);
13. Horn;
14. Speedometer;
15. Bumpers;
16. Muffler and exhaust system;
17. Condition of tires, including tread depth;

18. Interior and exterior rear view mirrors; and
19. Safety belts for driver and passenger(s).

Regulatory Requirements

a. TNCs (not the drivers) must be permitted by this Commission before operating as a TNC.[39]
b. TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences. TNC drivers are strictly prohibited from accepting street hails.
c. TNCs shall participate in the California Department of Motor Vehicle's Employer Pull Notice Program to obtain timely notice when any of the following are added to a TNC driver's driving record:
    i. Convictions;
    ii. Accidents;
    iii. Failures to appear;
    iv. Driver's license suspension or revocation; and
    v. Any other action taken against the driving privilege.
d. TNCs shall obtain proof of insurance from each TNC driver before the driver begins providing service and for as long as the driver remains available to provide service.
e. TNCs shall allow passengers to indicate whether they require a wheelchair-accessible vehicle or a vehicle otherwise accessible to individuals with disabilities.

[39] There are six types of charter party carrier permits/certificates. TNCs shall apply for a class P permit.

f. One year from the effective date of these rules and annually thereafter for three years, 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.

g. TNC vehicles shall display consistent trade dress (i.e., distinctive signage or display on the vehicle) when providing TNC services that is sufficiently large and color contrasted as to be readable during daylight hours at a distance of 50 feet. The trade dress shall be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with a particular TNC (or licensed transportation provider). Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills. Magnetic or removable trade dress is acceptable. TNC shall file a photograph of their trade dress with the Safety and Enforcement Division.

h. Although TNCs may provide platforms allowing drivers and passengers to "rate" each other, TNCs shall ensure that such ratings are not based on unlawful discrimination, and that drivers do not discriminate against passengers or potential passengers on the basis of geographic endpoints of the ride, race, color, national origin, religion, sex, disability, age, or sexual orientation/identity.

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

j. One year from the effective date of these rules and annually thereafter for three years, each TNC shall

submit to the Safety and Enforcement Division a report detailing the number of drivers that were found to have committed a violation and/or suspended.

k. Upon request, drivers shall display to Commission or airport enforcement officers, law enforcement, or city or county officials a physical or electronic record of a ride in progress sufficient to establish that it was prearranged. To the extent that trip records are contained on electronic devices, TNC drivers are not required to relinquish custody of the devices in order to make the required display.

l. If a passenger files a complaint against a TNC or TNC driver with the Commission, Commission staff shall have the right to inspect TNC records and vehicles as necessary to investigate and resolve the complaint to the same extent the Commission and Commission staff is permitted to inspect all other charter-party carriers.

m. Operations at Airports. TNCs shall not conduct any operations on the property of or into any airport unless such operations are authorized by the airport authority involved.

n. Similar to our regulations over limousines 0.033% of the TNC's California revenues shall be collected by this Commission on a quarterly basis as part of overall fees.

TNCs that fail to adhere to these requirements may have their permits revoked or be otherwise subject to sanction by the Commission. The Commission is authorized to conduct inspections of charter-party carriers including TNCs. For instance, PU Code § 5371.5 states that: "Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the commission shall investigate any business that advertises limousine-for-hire or passenger charter transportation service for compensation

in motor vehicles." Therefore, TNCs must keep records of all trips made by its TNC drivers. The Commission is also authorized to "cancel, revoke, or suspend any operating permit or certificate" if the carrier violates any of the provisions of the Act, provisions of the operating permit or certificate issued thereunder, or any order, decision, rule, regulation, direction, demand, or requirement established by the Commission.40 The Commission is also authorized to issue fines.[41]

Sections 5411 to 5420 of the Act contain relevant provisions regarding issuing fines and penalties. In addition, the Commission has established a citation program in Resolution ALJ-187, which provides a process by which the Commission may issue fines, carriers may appeal fines, and the Commission may hold a hearing pursuant to that appeal.

These provisions authorizing the Commission to inspect, investigate, and issue fines and other penalties apply in equal measure to all TNCs as they do to other charter-party carriers. Therefore, the Commission must have access to a TNC's records whenever it requests them.

3. Safety

The Commission opened this proceeding to protect public safety and secondarily encourage innovators to use technology to improve the lives of Californians. The Commission has a responsibility for determining whether and how public safety might be affected by these TNCs. In opening this Rulemaking, the Commission wanted to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of TNCs.

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[40] PU Code § 5378.

[41] *See e.g.,* PU Code § 5378(b).

3.1. Comments on the Rulemaking

As with the issue of jurisdiction a number of parties filed comments about the effect of TNC service on public safety. In this section we will summarize all the positions filed.

The CHP asserts that it is too early to determine the positive or negative effect of this type of service on both the passengers and public safety. It goes on to caution, however, that passenger transportation left unregulated unnecessarily increases the potential for operation of unsafe vehicles, unqualified drivers, and uninsured transportation drivers.[42]

Luxor Cab's comments focus more on the need to keep drivers safe. Luxor Cab asserts that taxicab drivers have the highest risk of occupational homicide of all US occupations, and that this is why taxi regulators require safety equipment such as bullet-resistant partitions and digital security cameras, as well as crime-prevention training for drivers.[43]

The GCLA believes that the transportation technology companies can put the public at risk of potential dangers arising from having unregulated and perhaps even unlicensed drivers and unsafe vehicles providing for-hire transportation services without oversight or enforcement.[44]

The San Francisco Airport Commission believes that lack of adequate liability insurance, criminal background checks, driver training and regular vehicle inspections all decrease public safety, and although some TNCs represent

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[42] CHP Comments filed on 7/17/13 at 2.

[43] Luxor Cab Comments filed on 01/28/13 at 2.

[44] GCLA Comments filed on 01/28/13 at 2.

that they do all of the above, the Airport Commission is asking for regulatory verification.[45]

The SFMTA asserts that TNCs have a negative effect on public safety because of a lack of regulatory oversight. The SFMTA asserts that at the state and local level, California regulators of taxi and limousine service protect the public with the following kinds of requirements:

1. Criminal background checks of drivers;
2. Drug and alcohol testing of drivers;
3. DMV "pull notice" checks to enable suspension of drivers with new safety related moving violations;
4. Driver training for local geography, traffic safety and customer service values;
5. Vehicle age and mileage limitations;
6. Routine, professional vehicle inspections; and
7. Transparent pricing regulations.[46]

The San Francisco Cab Drivers Association asserts that that the proliferation and acceptance of private vehicles and unlicensed public passenger drivers for hire creates a false sense of trust by the general public. Furthermore, it asserts that they are witnessing private vehicles being flagged down and soliciting passengers on the street which will result in an assault or worse, on a passenger or a driver, unprotected by security cameras, dispatch or a shield, and no readily identifiable markings on the vehicle.[47]

In their comments, Lyft notes that ridesharing is nothing new and has been occurring on a relatively large scale for many decades – from casual carpools and

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[45] San Francisco Airport Commission Opening Comments filed on 01/28/13 at 2.

[46] SFMTA Opening Comments filed on 01/28/13 at 8.

[47] San Francisco Cab Association's Opening Comments filed on 01/29/13 at 2.

bulletin boards to more recent forums such as Craigslist – without any regulation and with few if any institutional safety mechanisms. Lyft goes on to say that rather than creating a new activity requiring scrutiny as a public safety concern, responsible peer-to-peer platforms such as Lyft have introduced innovative and highly effective institutional safety mechanisms that increase public safety over existing alternatives. New tools made available by modern technologies – online criminal background checks, mobile application photo identification, and GPS positioning – can advance public safety beyond existing measures.[48]

SideCar asserts that TNCs are mission-driven and have strong incentives to protect the trust and safety of their communities and the public. SideCar goes on to claim that its safety program and rules aim to reduce and prevent accidents or other incidents, and it has implemented a 10-point safety program to create a safe experience for drivers and riders alike. Under this safety program, all drivers are required to undergo thorough background checks and safety training.[49]

United Taxicab Workers assert that TNCs provide service through non-professional drivers of private vehicles, and since they claim that they are not regulated by the state or local authorities, the public can only take the word of the company. United Taxicab Workers go on to note that safety is the paramount concern in the taxi regulation and that taxis are inspected regularly and are subject to age and mileage requirements. Furthermore, drivers receive training and must go through background checks prior to becoming a taxi driver.[50]

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[48] Lyft Opening Comments filed on 01/28/13 at 4-5.

[49] SideCar Opening Comments filed on 01/28/13 at 17.

[50] United Taxicab Workers Opening Comments filed on 01/29/13 at 4-5.

In its comments, TPAC asserts that the primary reason for regulation of the passenger transportation industry is the need to ensure safety. It goes on to say that public safety is promoted through the screening of drivers, and by ensuring that those who take on the responsibility of transporting passengers can be held accountable for their actions.[51]

3.2. Discussion

We agree that protecting and enhancing public safety is the paramount purpose behind regulating this industry. We initiated this Rulemaking for the sole purpose of determining how TNCs affect public safety. We further agree with the CHP, the San Francisco Airport Commission, the SFMTA, and other parties who have urged us to adopt safety rules and regulations that will hold TNCs accountable for safety. We also agree with Lyft that ridesharing is nothing new and has been occurring on a relatively large scale for many decades – from casual carpools and bulletin boards to more recent forums such as Craigslist. We note, however, that there is a specific exemption for the true form of ridesharing in the PU Code. PU Code § 5353(h) exempts:

> Transportation of persons between home and work locations or of persons having a common work-related trip in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

[51] TPAC Opening Comments filed on 02/04/13 at 6.

The section also states:

> This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision does not include the recovery of actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

In our view the Commission firmly believes that TNCs do not meet the rideshare exemption and actually are for-hire transportation services.

Lyft and SideCar have both entered into settlement agreements with the Commission's Safety and Enforcement Division as stated above and have complied with the safety requirements in those agreements. Therefore, it is not entirely correct to state (as some parties have in their comments) that the public must only rely on the company's word. These agreements, however, are interim arrangements pending the conclusion of this Rulemaking. Therefore, in this decision we adopt strict safety regulations and guidelines that are similar in nature and in some cases more stringent than current and past practice in the transportation industry as a whole. The regulations for TNCs will require the company to conduct criminal background checks, establish a driver training program, maintain a zero-tolerance policy on drugs and alcohol, register in the Department of Motor Vehicle (DMV) Pull Notice program, conduct a 19-point car inspection, and require a one-year driving history from the driver. These regulations along with other requirements are stated above in the summary section as well as the jurisdiction section.

Regarding the criminal background checks, we will require each TNC to conduct a criminal background check for each driver prior to that applicant becoming a TNC driver. The criminal background check must be a national criminal background check including the national sex offender database. The

criminal background check should be using the applicant's social security number and not just the applicant's name. Any felony criminal conviction within seven years prior to the date of the background check for violent crime, a sexual offense, a crime involving property damage, and/or theft will deem the applicant ineligible to be a TNC driver.

Regarding the 19-point vehicle inspection, we require the TNC or an authorized third party such as Triple AAA or AAMCO to conduct the car inspection and for the TNC to maintain the record of such inspection in case of an audit.

Regarding the DMV Pull Notice Program, we are aware that the California DMV does not currently permit TNCs to enroll drivers in the Employer Pull Notice Program. We are aware that it was established to provide employers and regulatory agencies with a means of promoting driver safety through the ongoing review of driver records. An employer enrolled in the program is assigned a requester code. The requester code is added to an employee's driver license (DL) record. When an employee's DL is updated to record an action/activity, a check is made electronically to determine if a pull notice is on file. If the action/activity is one that is specified to be reported under the program, a driver record is generated and mailed to that employer. The DMV Pull Notice program allows a transportation company to monitor DL records of employees. This monitoring accomplishes the following:

- Improves public safety;
- Determines if each driver has a valid DL;
- Reveals problem drivers or driving behavior; and
- Helps to minimize the transportation company's liability.

The Commission began enrolling owner operators into this program in 1990. We are similarly hoping that the DMV is able to amend the requirements

of the program to allow TNCs to participate automatically in the program once they have completed the other requirements for the driver to begin providing service. Specifically, we encourage the DMV to modify the language about employers being the only entity to qualify for this automatic service. We understand that currently TNCs can manually enter into the program, but automatic enrollment improves public safety in that the notification to TNCs will be automatic and timely. We are hopeful to work with the DMV to find a solution that improves public safety as we have added new rules and regulations to allow TNCs to provide transportation services. Until the DMV Employer Pull Notice Program is available for use by TNCs, TNCs shall perform, prior to allowing a driver on the platform and quarterly thereafter, driving record checks through the DMV in order to ensure that drivers meet applicable requirements. The DMV check criteria shall provide that a user may have no more than 3 points within the preceding 3 years, no "major violations" (reckless driving, hit and run, or driving with a suspended license conviction) within the preceding 3 years, and no driving under the influence conviction within the past 7 years.

Regarding the accessibility plan which each TNC is required to file within 45 days of the issuance of this decision, each plan shall include the following:

a. A timeline for modifying apps so that they allow passengers to indicate their access needs, including but not limited to the need for a wheelchair accessible vehicle. A passenger should be allowed to state other access needs, either from a drop-down menu with room for comments or through a field requesting information.
b. A plan for how the TNC will work to provide appropriate vehicles for passengers who specify access needs, including but not limited to a plan to provide incentive to individuals with accessible vehicles to become TNC drivers.

c. A timeline for modifying apps and TNC websites so that they meet accessibility standards. The relevant standard for web access is WCAG 2.0 AA. Guidance on accessibility standards for iPhone apps can be found at http://developer.apple.com/library/ios/documentation/UserExperience/Conceptual/iPhone Accessibility and http://developer.apple.com/library/ios/documentation/UserExperience/Conceptual/iPhone Accessibility/Making Application Accessible/Making Application Accessible.html. Guidance on accessibility standards for Android apps can be found at http://developer.android.com/training/accessible-app.html.

d. A timeline for modifying apps so that they allow passengers to indicate that they are accompanied by a service animal, and for adopting a policy that service animals will be accommodated.

e. A plan for ensuring that drivers' review of customers will not be used in a manner that results in discrimination, including any policies that will be adopted and any monitoring that will take place by the TNC to enforce this requirement.

Each aspect of the accessibility plan will be addressed in the annual reports required of each TNC regarding compliance, necessary improvements (if any) and additional steps to be taken by the TNC to ensure that that there is no divide between service provided to the able and disabled communities. These reports will be served by SED on the service list for this proceeding, and input from interested parties will be invited. Based on SED's review of the annual reports as well as input from interested parties, the Commission will determine what, if any, changes need to be made in the TNC business model, or new regulations adopted, in order to ensure that TNCs are accessible to, and do not discriminate against, persons with disabilities.

4. Ridesharing

The definition of ridesharing does not permit transportation performed for profit.[52] Recovery of actual costs incurred only applies to vanpool vehicles, which is defined by the Vehicle Code as seating more than 10 passengers, but less than 15 passengers, including the driver. The Commission sought comment on whether the TNCs' business models qualify as ridesharing for the purpose of the § 5353(h) exemption and, with respect to its passenger carrier regulation, whether the Commission should recommend a broader or narrower definition of ridesharing than that contained in the California Vehicle Code.

4.1. Comments on the Rulemaking

Various parties filed comments in response to the questions asked in the Rulemaking. This section will summarize all the various positions. We may not cite every party that filed comments, but we will cite every position.

Opening comments filed by former San Francisco Mayor Willie J. Brown Jr. proposes a mandatory cap on TNC driver earnings and an updated definition that includes this cap in the PU Code § 5353 (f).[53] These comments further state that the issue for sites such as Tickengo and 511.org is that there is no clear definition of vehicles carrying passengers on a noncommercial enterprise basis, and that a clear definition of ridesharing would help eliminate confusion with TCPs, fill empty seats in cars, and reduce pollution and congestion while lowering the cost of door-to-door transportation.[54] Tickengo proposes that the we limit the maximum share-the-expense carpool amount drivers can collect on a

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[52] Rulemaking at 7.

[53] Comments from Willie Brown filed on 01/18/13 at 1-2.

[54] Comments of Willie Brown filed on 01/18/13 at 2.

yearly basis to the American Automobile Association's (AAA) official annual cost of vehicle ownership (currently $8,776 per year).[55]

Luxor Cab, on the other hand, asserts that the statutory definition of ridesharing is adequate, but what is lacking is compliance with regulations by unlicensed for-hire TNCs.[56] Luxor Cab further comments that legitimate ridesharing does not include the transportation of a passenger on a trip the driver was not otherwise planning to take. Luxor asserts that it is the very nature of taxicab service that the ride is offered on demand and in accordance with the passenger's desired location. Finally, Luxor Cab comments that the amount of compensation should not determine the need for compliance with regulations, but rather it is the nature of the service that ought to be determinative.[57]

The SFMTA asserts that there is no reason for the Commission to change the definition of ridesharing under the Vehicle Code in order to accommodate for-profit transportation services delivered through smartphone applications. It further asserts that there is nothing about the 'new business model' of offering for-hire transportation services through the mechanism of a smartphone application that justifies abandoning the fundamental regulatory infrastructure of the transportation for-hire industry, or that changes the level of regulatory concern when members of the public place themselves in the care and control of a private individual who they pay to carry them safely to their destination in a motor vehicle over the public right of way.[58]

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[55] Comments of Willie Brown filed on 01/18/13 at 3.

[56] Luxor Cab comments filed on 01/28/13 at 3.

[57] Luxor Cab comments filed on 01/28/13 at 3.

[58] SFMTA comments filed on 01/28/13 at 9.

Lyft asserts that the Commission is reading the PU Code too narrowly and recommends that the Commission explicitly acknowledge and clarify that: 1) a voluntary donation, regardless of the amount, does not constitute "compensation" as the term is used in § 5360 and that 2) the "primary purpose" of any driver that only receives voluntary donations from riders and no other pay from the company operating the rideshare platform is not to make a "profit," as defined in § 5353(h). Lyft also suggests that the Commission consider recommending that the Legislature clarify or broaden the definition of ridesharing.[59]

SideCar urges the Commission to clarify the rideshare exemption in PU Code § 5353(h) and establish a bright line "safe harbor" for ridesharing drivers and authentic peer-to-peer rideshare technology providers. It goes on to say that while the Public Utilities Code currently has no provision for the recovery of the costs incurred in owning and operating a vehicle, except a vanpool vehicle, SideCar believes that a standard should be adopted for ridesharing in regular passenger vehicles.[60]

The San Francisco Cab Drivers Association asserts that businesses like Sidecar and Lyft clearly do not qualify for exemption from charter carrier laws under the definition of ridesharing as defined in § 522 of the Vehicle Code. This transportation is not between home and work locations or of persons having a common work-related trip. The sole purpose of these trips is to convey passengers to their requested destination, for profit.[61]

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[59] Lyft comments filed on 01/28/13 at 7.

[60] SideCar comments filed on 01/28/13 at 11.

[61] San Francisco Cab Drivers Association comments filed on 01/28/13 at 3.

IATR asserts that while the PU Code exempts from regulation passenger vehicles that carry passengers on a "noncommercial enterprise basis," this term is not defined. It goes on to say that TNCs fail to meet the definition for ridesharing (as they operate outside of strictly work and home locations, and transport passengers on trips that are NOT incidental to the driver) and fail to qualify for the Commission exemption because they are operating for profit/compensation.[62] IATR further suggests that the definition of ridesharing be narrowed whereas Lyft says that the Commission is reading the definition too narrowly. IATR says that the Commission should act to clarify the regulatory exemption and to make clear that to qualify for the exemption, a driver is prohibited from making any profit and/or accepting compensation.[63]

The CHP asserts that the term "ridesharing" enjoys a specific niche within the lexicon of transportation – notwithstanding the vehicle used, ridesharing is essentially deemed to be reserved for like-minded individuals with a transportation motivation incidental to another purpose and not seated in profit-making derived from the transportation.[64]

4.2. Discussion

We agree with the vast majority of the parties that filed comments that TNCs do not qualify for the rideshare exemption under PU Code § 5353(h).

PU Code § 5353(h) exempts from Commission regulation:

> Transportation of persons between home and work locations or of persons having a common work-related trip

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[62] IATR Comments filed on 01/28/13 at 4.

[63] IATR Comments filed on 01/28/13 at 5.

[64] CHP comments filed on 7/17/13 at 4-5.

> purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars ($75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.[65]

Section 5353(h) provides two opportunities to qualify for the rideshare exemption: Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. TNCs fail to satisfy either of these requirements.

In our review of the filings and supporting documents, there is no evidence that TNC drivers have a common work-related or incidental purpose

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[65] Vehicle Code § 522 defines "ridesharing" as "two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, bus pooling, taxi pooling, jitney, and public transit."

with their passengers. Instead, drivers transport passengers entirely at the convenience of the passenger:

> Lyft is recruiting drivers with the following language: "Be a Lyft Driver" material states that "drivers are making up to $35/hour + choosing their own hours!"[66]
>
> Uber's service is defined as "your on-demand private driver."[67]
>
> SideCar offers the following pitch to its prospective drivers: "Drive where you want, when you want, and who you want. You are your own boss. Some of our SideCar drivers are earning $30+ per hour."[68]
>
> InstantCab tells prospective drivers that it makes "it easy for customers and cab drivers to find each other. We're looking for drivers to help us launch and provide high quality service to anyone who needs a taxi. We're not a taxi company, you can work for any existing taxi company and use our app to find guaranteed customers."[69]
>
> Tickengo tells its prospective drivers that they can "accept any ride if you want to go to the same destination*, or if you just want to help.*"[70]

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[66] http://www.lyft.me/drivers.

[67] Exhibit A, 34, Workshop Brief, filed by TPAC on April 3, 2013.

[68] Exhibit C, 48, Workshop Brief, filed by TPAC on April 3, 2013.

[69] https://instantcab.wordpress.com/join/.

[70] https://tickengo.com/a/becomedriver/. (Italics added.)

Services provided by TNCs are thus very different from traditional, longstanding forms of ridesharing.[71] TNCs are clearly designed to provide a car service for compensation. There is no requirement that there be a common purpose. Instead, TNCs operate as an alternative to other traditional car services. Several parties in comments on the proposed decision expressed concern that the proposed decision would, as former San Francisco Mayor Brown described in his comments, limit the ability of "a regular citizen [to] request a ride from a family member who may wish to give them a ride to the airport for free."[72] Similarly, eRideShare, which has provided an online carpool matching service in 1999, expressed concerns that the proposed decision would override existing statutory exemptions for ridesharing services.[73] These concerns are ill founded. We reiterate that the proposed decision in no way impacts the exemptions in Section 5353 of the Public Utility Code. To the extent that services such as Rideshare meet either the "non-commercial enterprise" or rideshare exemption under Section 5353, or other exemptions as applicable, such services would be exempt from Commission regulation. The Commission has never regulated the ability of a "regular citizen [to] request a ride from a family member who may wish to give them a ride to the airport for free," and nothing in the Public Utilities Code or the proposed decision would extend the Commission's

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[71] The NOETS should be contrasted with http://www.511.org, a ridesharing service which is managed by a partnership of public agencies led by the Metropolitan Transportation Commission, the California Highway Patrol, and the California Department of Transportation. There are no references to Terms and Conditions, donations, and other forms of compensation.

[72] Comments on Proposed Decision – from former San Francisco Mayor Willie L. Brown Jr. on 8/12/2013.

[73] Final Opening Comments of Erideshare Inc. on 08/19/2013.

jurisdictional reach to such lengths. Further, the Commission would again note that the basis for regulating TNCs is that they meet the definition of a charter-party carrier under the Public Utilities Code. That is, they are "engaged in the transportation of persons by motor vehicle for compensation."[74]

We agree with SFMTA that there is no reason for the Commission to change the definition of ridesharing under the Vehicle Code in order to accommodate for-profit transportation services delivered through smartphone applications. Furthermore, there is nothing about the 'new business model' of offering for-hire transportation services through the mechanism of a smartphone application that justifies abandoning the fundamental regulatory infrastructure of the transportation for-hire industry, or that changes the level of regulatory concern. The underlying principal continues to be ensuring public safety. Regulation is the safety net that the public should rely on for its protection. We are not persuaded by UberX and other TNCs that would like us to create a regulatory gap because they are using a smartphone to facilitate transportation for-hire. We are, however, encouraged by the TNC's embrace of technology and innovation to bring choice and convenience to the public in a safe manner.

5. Transportation Access

The Commission's authority over passenger carriers is grounded in the need to protect the public's safe and reliable access to California's roadways. Section 5352 of the Act states:

> The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for

[74] PU Code § 5360 (emphasis added).

> the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; and to promote carrier and public safety through its safety enforcement regulations.

PU Code § 5352 positions public safety as a key goal in ensuring that the public enjoys full access to the roadways. In the Rulemaking the Commission sought comment on the ways that safety regulations may enhance or impede public access to the roadways.

5.1. Comments on the Rulemaking

Many parties filed comments in response to this issue and there were some that remained silent. We will summarize those positions that were submitted in this section.

Luxor Cab asserts that unlicensed for-hire carriers such as Uber, Lyft, and SideCar do not invest in safety equipment and crime-prevention training for drivers. It goes on to say that TNCs and their drivers try to compensate for the lack of professional safety measures by cherry-picking the customers whom they believe are safest to convey. Luxor Cab then cautions that the result of this type of cherry-picking is de facto red-lining of low-income neighborhoods and discrimination against customers based on drivers' profiling that may be little more than stereotyping according to ethnicity or disability. Luxor Cab also says

that such practices are illegal for licensed operators because they have the effect of reducing public access to the roadways.[75]

The CHP asserts that the Commission's oversight responsibilities relative to transportation access are rooted in two essential areas. First, the regulation of accident indemnity to ensure adequate and dependable service by transportation operators and preservation of full use of the highways; and secondly, to promote public and operator safety through enforcement regulations.[76]

Perhaps the most detailed and focused comments on this issue came from Center for Accessible Technology (CforAT). CforAT is a nonprofit organization that supports use of technology to promote independent living for people with disabilities. CforAT is seeking to ensure that regulated utilities and services, which are necessities of modern life, are fully accessible to its constituency. CforAT goes on to say that any demand-response transit service must also comply with state and federal anti-discrimination statutes, including requirements that such services be accessible to people with disabilities.[77]

San Francisco Cab Drivers Association asserts that they have personally witnessed an abundance of Lyft and other private vehicles transporting people in the back seat, blocking up traffic and making illegal maneuvers, while legal taxicabs drive around empty. They go on to say that this adds to traffic congestion. Additionally, the assertion is made that a Lyft driver nearly ran into the individual head-on while making an illegal left turn across Van Ness Avenue

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[75] Luxor Cab opening comments filed on 01/28/13 at 3-4.

[76] CHP comments filed on 07/17/13 at 3.

[77] CforAT comments filed on 01/28/13 at 1-2.

in San Francisco onto California Street and a professional driver would not do that.[78]

5.2. Discussion

We agree with CforAT that TNCs must endeavor to provide equal access to all consumers. Because TNCs are in their infancy we cannot determine at this point whether equal access is being hampered. As a threshold matter, TNCs must do the following:

a. TNCs shall allow passengers to indicate whether they require a wheelchair-accessible vehicle or a vehicle otherwise accessible to individuals with disabilities.

b. One year from the effective date of these rules and annually thereafter for three years, 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. Upon receipt this report shall be made public by the Safety and Enforcement Division. This report shall also contain a description of any instances or complaints of unfair treatment or discrimination of persons with disabilities.

The above information will be used by the Commission to determine what, if any, changes need to be made in the TNC business model, or new regulations need to be adopted, in order to ensure that TNCs are accessible to, and do not discriminate against, persons with disabilities. The Commission also notes it currently has few provisions or protections to ensure equal access for passengers

[78] San Francisco Cab Drivers Association comments filed on 01/29/13 at 3-4.

with disabilities under its current TCP regulations.[79] Updating any regulations in this area, as found to be needed, may also be something the Commission should consider in Phase 2 of this rulemaking.

We also agree with the CHP that the Commission must regulate TNCs to ensure adequate and dependable service by transportation operators and to promote public and operator safety. Consequently, we require TNCs to follow the safety and regulatory requirements stated above in section 3.2 of this decision.

And we also agree with Luxor Cab that discrimination against customers based on drivers' profiling that may be little more than stereotyping by ethnicity, disability, or economic class, will not be tolerated. It is noteworthy that, although not a party to this proceeding, Homobiles was created to serve a community that may not have been adequately served by the existing transportation forms. According to Homobiles' website, it was formed to serve underserved communities who experience stress or discrimination on various forms of transportation for hire due to their gender or sexual identity.[80] The Commission notes that while some parties argue that TNCs such as Lyft, Uber, and SideCar must be regulated either as taxi cabs or limousines in order to ensure nondiscrimination and public safety, Homobiles was formed to meet the needs of consumers whose transportation needs are not being adequately met by either taxi cabs or limousines. We applaud the founders of Homobiles for

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[79] For instance, the Commission requires every carrier to maintain on file with the Commission an equipment list of all vehicles in use including whether each vehicle is handicap accessible. GO 157-D, Section 4.01.

[80] http://www.homobiles.org/terms/.

establishing a non-profit 501c3 volunteer organization that caters to the underserved communities of San Francisco.

We agree with CforAT that the Commission should be informed by the legacy of transit discrimination and should work to ensure that the new services mark a break from this problematic history. Just as it would be unacceptable to allow any form of transit service to operate if it were to engage in racial discrimination, new forms of online-enabled transit services cannot be permitted to exclude people with disabilities. We agree. Therefore, we direct TNCs to submit a plan within 90 days of the effective date of this decision to tell us how they plan to ensure that TNCs will avoid creating a divide between the able and disabled communities. TNCs must explain how they plan to provide incentives to individuals with accessible vehicles to become TNC drivers. Furthermore, TNCs should ensure accessibility accommodations for their apps and websites to enable the disabled public access to the same services as clients who are not disabled.[81]

6. Insurance

California Insurance Code § 11580.1(b) requires that non-commercial vehicles have a minimum liability coverage of $15,000 for injury/death to one person, $30,000 for injury/death to more than one person, and $5,000 for damage to property. The Commission's GO 115-F requires that any charter party carrier vehicle with a seating capacity of seven passengers or fewer have a minimum commercial coverage of $750,000. In the Rulemaking, the Commission sought

[81] Title III of the Americans with Disabilities Act (ADA) requires that businesses and nonprofit services providers make accessibility accommodations to enable the disabled public to access the same services as clients who are not disabled.

comments on, *inter alia*, the insurance aspects of this new transportation model. For instance, if a vehicle is insured as a private vehicle, but involved in an accident while transporting passengers for compensation, the Rulemaking asked what type of coverage would the insurance offer for injuries/damage to the driver, the paying passenger, and any other people involved in the accident and/or the vehicles involved, and whether the insurance industry had an opinion on the insurance coverage available for private vehicles used to transport passengers for compensation.

6.1. Comments on the Rulemaking

This Rulemaking has at least 18 parties who filed comments. No party claimed that TNCs should not have insurance or that liability insurance in the transportation business was not a key component of their business model. In this section we will note the Personal Insurance Federation of California's[82] (PIFC) comments. We also note that many parties claimed either in their comments or during the workshop that TNCs are uninsured.

In its comment's, PIFC asserts that it surveyed its member insurance companies, finding that "the industry standard for personal auto insurance policy contracts is to exempt from insurance coverage claims involving vehicles used for transporting passengers for a charge."[83] PIFC goes on to say that in situations where a vehicle is insured as a private vehicle and is used to transport

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[82] According to comments filed by PIFC on 01/28/13, the PIFC members represent six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) which collectively write a majority of the personal lines auto insurance in California.

[83] PIFC comments filed on 01/28/13 at 1-2.

passengers for a fee, no insurance coverage would exist.[84] The Commission also inquired about the sufficiency of the minimum liability coverage required under California Insurance Code § 1158.1(b). PIFC asserts that since there would be no coverage for the type of situations at issue, the minimum amount of coverage would be irrelevant.[85] Finally, with respect to California Insurance Code § 11580.24, PIFC notes that the legislature encouraged car sharing programs (i.e., renting out one's personal vehicle to another driver), as long as the owner does not earn more than the annual cost of owning the vehicle from the car sharing program. PIFC goes on to say that in doing so, it shields private passenger car insurers from any liability by shifting the responsibility for coverage to the private vehicle ridesharing program. The PIFC notes that the issue before the Commission is not ridesharing, but instead it is one of using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.[86]

6.2. Discussion

Each TNC must maintain commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving TNC vehicles and drivers in transit to or during a TNC trip. The insurance coverage must be available to cover claims regardless of whether a relevant TNC driver maintains insurance adequate to cover any portion of the claim. This level of liability insurance is above what the

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[84] PIFC comments filed on 01/28/13 at 1-2.

[85] *Id.*

[86] *Id.*

Commission currently requires of TCP drivers. It is equal to the insurance that the SFMTA requires of taxicab companies.

We reject the claim that Lyft, SideCar, and Uber do not have insurance. The Commission's Safety & Enforcement Division, in entering into settlement agreements with these TNCs, made sure that each of these companies maintained excess liability insurance policies providing a minimum of $1 million per incident. We note PIFC's comments in this Rulemaking, and note that, even if a TNC driver's personal insurance does not apply in the event of an accident, the excess liability insurance required by the Commission will apply.

We require that each TNC file their insurance policies under seal with the Commission as part of applying for a license. Furthermore, the license for the TNC will automatically expire upon expiration of the insurance policy.

7. Workshop Report

As part of the Scoping Memo, parties were invited to attend a workshop to consider issues including but not limited to jurisdiction, safety, transportation access, and proposed modifications to existing rules and regulations. On April 10 and 11, 2013, the parties attended the Commission's workshop in San Francisco at the Commission's offices. The workshop sessions were publicly noticed and open to the public.

Two parties that we'd like to thank and extend our appreciation to for drafting the workshop report are TPAC and TransForm. On May 17th these two parties filed the Workshop Report on behalf of those parties who attended

the workshop.[87] The Workshop Report summarizes party positions as articulated during the workshop.

The Workshop Report is attached as Attachment A to this decision. Most of the issues such as jurisdiction, safety, access, and the definition of ridesharing have already been discussed in the above sections of this decision. There are, however, two issues not addressed above that we will address in this section.

During the workshop, Commission staff asked whether there was a third way to regulate TNCs that protected public safety, but also allowed innovation and technology to bring choice and convenience to the public. The SFMTA/IATR stated that the idea that there is some third way to regulate these TNCs is offensive to the men and women who work as regulators to protect public safety and access. The SFMTA/IATR pointed out that the taxi industry is a highly managed transportation network that requires regulations to ensure universal access to door to door transportation in an urban environment.[88] TPAC stated that it believed that the Commission had inappropriately provided preapproval to a third-way regulatory approach via its settlement agreements with companies such as Uber and Lyft. TPAC stated that the third-way regulatory approach affected by the TNCs' settlement agreements amounted to the deregulation of the taxicab industry, and as such violated state law.[89] Counsel for the SFMTA and the San Francisco Airport Commission stated that

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[87] TPAC, TransForm, CforAT, GCLA, Luxor Cab, IATR, PIFC, the San Francisco Cab Drivers Association, the San Francisco Limo Union, the San Francisco Medallion Association, SFMTA, The San Francisco Airport Commission, SideCar, Tickengo, Uber, The United Taxicab Workers, TURN, and Lyft.

[88] Workshop Report at 14.

[89] *Id*.

TNCs have presented no credible argument for a third way. The SFMTA and San Francisco Airport Commission stated that there are two possible regulatory schemes, the local system for taxicabs and the state system for charter-party carriers, but there is no justification for subjecting TNCs to lesser standards than those applicable to all other charter party carriers.[90] Luxor Cab stated that the topic of a third way to regulate TNCs is misleading because it assumes that there is something new about the TNCs, when taxi companies have been using similar technological services for several years before the inception of Uber, Lyft, and SideCar.[91] SideCar asserted the need for regulatory recognition of the innovative combination of services offered by communications platforms such as SideCar, in combination with noncommercial ridesharing.[92] Lyft stated that, to the extent the Commission finds that it should regulate to protect public safety interests, it is supportive of a third way regulatory approach because, if applied to TNCs, the current regulatory scheme would create unreasonable barriers for ridesharing services to enter the market.[93]

A second issue that was discussed during the workshops and does not neatly fit into any of the discussion above is the notion of fair competition among regulated and unregulated entities. TPAC commented that the goal of the Commission should be to create a fair system. In unbalanced situations, the market will correct itself and move towards balance, thus, competition will find a level playing field. Where both a regulated system and an unregulated system

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[90] Workshop Report at 15.

[91] *Id.*

[92] *Id.*

[93] *Id.*

exist, the natural inclination of the industry will be to move towards deregulation in order to avoid all of the costs of regulatory compliance. Consequently there will be no room left for a regulated industry.[94]

Several parties including the SFMTA, San Francisco Airport Commission, TPAC, United Taxicab Workers, and the SF Cab Drivers Association contend that regulated taxis cannot compete with TNCs. United Taxicab Workers argue that to allow TNCs to exist in their current unregulated form or subject to minimal regulation essentially creates a race towards the bottom with negative impact on safety and service. These groups contended that professional drivers will be pushed towards the TNC business model because of lower operational costs. The representative from the SFMTA/IATR states that when this unregulated system devastates the regulated environment, no one will be left to provide safe and accessible door to door service to city residents and visitors.[95]

7.1. Discussion

We are not persuaded by the position taken by the SFMTA that updating regulation is offensive to those currently working to regulate public safety and access. Rather we are puzzled by the statement. Regulatory bodies must always look to update their rules and regulations in order to keep pace with time and technology. The Commission's purpose in this Rulemaking is to strike the proper balance between safety and innovation, so that regulation provides a safety net that the public can rely on for its protection while new businesses innovate and use technology to better the lives of Californians. The regulations that we are adopting for TNCs are similar, if not identical, to what the SFMTA

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[94] Workshop Report at 26.

[95] *Id*.

requires of taxicab drivers. Namely, we require a license for each TNC, require a criminal background check to be completed for each driver, require that each TNC establish a driver training program, and require liability insurance that is equal to what the SFMTA requires of taxicab drivers. We will not, however, meddle into their business model by forcing TNCs to designate each driver an employee or contractor. Again, our role is to protect public safety, not to dictate the business models of these companies.

We reject TPAC's allegation that a third way of regulation is the same as deregulation. The settlement agreements that SED entered into with three of the TNCs were a first step toward regulation. The regulations that we establish in this decision will ensure that safety is foundational to a TNC's business. Additionally, we create choice not only for passengers, but also drivers. Going forward, a company may either apply for a TNC license or a TCP license with the Commission.

We accept those party's comments calling for regulation of TNCs. As such, in this decision we exercise our existing jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act). In this decision under the broad grant of authority pursuant to PU Code § 5381, we create the category of TNC to accompany the existing category of TCP. A company or individual wishing to provide transportation or facilitate transportation of passengers can choose to either get a TCP license or a TNC license. The TCP requirements are already in place, although as suggested *supra* the Commission will open a second phase to this Rulemaking to update those rules and regulations to ensure that safety requirements are up to date.

8. Comments on Proposed Decision

The proposed decision of Commissioner Michael R. Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 19, 2013 Tickengo, CforAT, SideCar, Lyft, Uber, TPAC, IATR, Los Angeles Department of Transportation, GCLA, TransForm, Luxor Cab, eRideshare, SFMTA, California Airports Council, TLPA, San Francisco Cab Drivers Association, United Taxicab Workers, SFO, Personal Insurance Federation of California and Consumer Attorneys of California, and reply comments were filed on August 26, 2013 by TPAC, Luxor Cab, United Taxicab Workers, Lyft, IATR, CforAT, TLPA, SFMTA/SFO, SideCar, Uber, Personal Insurance Federation of California and SFCDA.

In response to comments, the proposed decision has been revised to further explain the definition of what constitutes a TNC. It is further noted that the existing exemptions under the Commission's Charter Party Carrier authority is not usurped by the creation of this new category. All of the existing eleven exemptions still apply. The proposed decision has also been revised to clarify what kind of a criminal background check is expected and finally what specifics should be included in the TNC plans to ensure accessibility. Other revisions in response to comments have been made as appropriate.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission opened this Rulemaking on December 20, 2012, to protect public safety and to encourage innovators to use technology to improve the lives of Californians.

2. The Commission has a responsibility for determining whether and how public safety might be affected by these TNCs.

3. Parties filed comments in this proceeding on January 28, 2013 and reply comments were filed on February 11, 2013.

4. On February 15, 2013, the Commission held a Prehearing Conference and on April 2, 2013, the assigned Commissioner and ALJ issued a Scoping Memo.

5. Workshops were held on April 11 and 12, 2013, at the Commission's auditorium.

6. In the Rulemaking we referred to these companies as New Online-Enabled Transportation Services. We are changing the abbreviation to TNC for ease of use.

7. TNCs are not just Lyft, SideCar, InstantCab, and UberX.

8. A TNC is defined as a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles.

9. California law currently recognizes and regulates three modes of passenger transportation for compensation: taxi services, regulated by cities and/or counties; and charter party carrier services, and passenger stage companies, regulated by the California Public Utilities Commission.

10. It is reasonable to conclude that in recent years, the communications revolution in wireless service, smartphones and apps has further facilitated the development and adoption of passenger transportation for compensation, to a

point where passengers seeking rides are readily connected with drivers willing to provide rides in private vehicles.

11. It is reasonable to conclude that TNCs are providing passenger transportation for compensation.

12. TNCs do not fit neatly into the conventional understandings or statutory definitions of either taxis or limousines, but that does not mean that this Commission's responsibility to public safety in the transportation industry should be ignored and/or left for individual companies to dictate.

13. TNCs operate on a prearranged basis because 1) before a passenger can request a ride, the passenger must download the software application, provide identification information and agree to the TNC service agreement, and 2) for a particular trip, the passenger must input information regarding current location, and finally 3) a TNC driver cannot be hailed on the street similar to a taxicab where no information is shared until the passenger enters the vehicle.

14. In order to comply with the applicable statutes and regulations, all TNC drivers must be able to prove that a ride was matched on the TNC software application as evidence of prearrangement.

15. The California DMV does not currently permit TNCs to enroll drivers in the Employer Pull Notice Program. Until the DMV Employer Pull Notice Program is available for use by TNCs, TNCs should perform, prior to allowing a driver on the platform and quarterly thereafter, driving record checks through DMV in order to ensure that drivers meet applicable requirements. The DMV check criteria shall provide that a user may have no more than 3 points within the preceding 3 years, no "major violations" (reckless driving, hit and run, or driving with a suspended license conviction) within the preceding 3 years, and no driving under the influence conviction within the past 7 years.

16. It is reasonable to conclude that TNCs are charter party passenger carriers, and therefore we will exercise our existing jurisdiction over these services pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.*

17. It is reasonable to exercise this Commission's broad grant of authority pursuant to PU Codes §§ 5381 and 701 to create the category of TNC to accompany the existing category of TCP. A company or individual wishing to provide transportation or facilitate transportation of passengers can choose to either get a TCP license or a TNC.

18. The definition of ridesharing does not permit transportation performed for profit.

19. Recovery of actual costs incurred only applies to vanpool vehicles, which is defined by the Vehicle Code as seating more than 10 passengers, but less than 15 passengers, including the driver.

20. It is reasonable to conclude that TNCs do not qualify for the rideshare exemption under PU Code § 5353(h), because § 5353(h) provides two opportunities to qualify for the rideshare exemption: either the transportation must have a common work-related purpose; or the transportation must be incidental to another purpose of the driver. TNCs fail to satisfy either of these requirements.

21. Pursuant to PU Code § 5352 the Commission's authority over passenger carriers is grounded in the need to protect the public's safe and reliable access to California's roadways.

22. PU Code § 5352 positions public safety as a key goal in ensuring that the public enjoys full access to the roadways.

23. A TNC is defined as a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles.

24. The primary distinction between a TNC and a TCP is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose.

25. A TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicles. With this definition in mind, the Commission's finds that Uber (in contrast to UberX) is not a TNC.

26. Uber connects riders with drivers who do not drive their own personal vehicle, but typically operate in town cars or limousines, which the driver may often as well use to transport customers for another limousine/town car company.

27. In order to ensure the greatest possible evidentiary record, the Commission would prefer to leave all TCP-related issues, including Uber's potential TCP status, to Phase II.

28. The Commission will not allow the uncertainty regarding Uber's insurance to persist during the pendency of Phase II; unless Uber is able to demonstrate to the Commission within 30 days of the issuance of this decision that it maintains commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers in transit to or during trips arranged through the Uber app, the Commission reserves the right to require Uber to obtain a TCP permit through Commission resolution..

29. UberX does meet the TNC definition and should apply for a TNC license.

30. In this decision we will require each TNC to maintain commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving TNC vehicles and drivers in transit to or during a TNC trip.

31. The criminal background check must be a national criminal background check including the national sex offender database. The criminal background check should be using the applicant's social security number and not just the applicant's name. Any felony criminal conviction within seven years prior to the date of the background check for violent crime, a sexual offense, a crime involving property damage, and/or theft will deem applicant ineligible to be a TNC driver.

32. The Commission is authorized to conduct inspections of charter-party carriers which will now include TNCs. For instance, § 5371.5 of the Act states that: "Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the commission shall investigate any business that advertises limousine-for-hire or passenger charter transportation service for compensation in motor vehicles."

33. The Commission is also authorized to issue fines pursuant to PU Code § 5378(b).

34. PU Code § 5411 to 5420 of the Act contain relevant provisions regarding issuing fines and penalties. These provisions allow the Commission to issue fines to carriers who have violated one or more provisions of the California Public Utilities Code. In addition, the Commission has established a citation program in Resolution ALJ-187.

35. The Commission's purpose in this Rulemaking is to 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.

Conclusions of Law

1. The Federal Telecommunications Act of 1996 and recently adopted California legislation (Senate Bill 1161 authored by Senator Alex Padilla) prevent states from regulating IP-enabled services, but they do not prevent states from regulation passenger transportation over public roadways.

2. TNCs are not providers of IP-enabled services and are not exempt from our jurisdiction.

3. To date neither the FCC, nor a court of higher jurisdiction, has ruled that this Commission, or any other state commission, is precluded by the Federal Telecommunication Act of 1996 from regulating TNCs.

4. The Commission regulates charter party passenger carriers pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act). Section 5360 states in part:

> Subject to the exclusions of Section 5353, "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state.
>
> Section 5381 states in part:
>
> …(t)he commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things…necessary and convenient in the exercise of such power and jurisdiction.

5. The Commission has very broad powers under PU Code § 701 whichh suggests that the Commission has the ability (via a rulemaking process) to develop new categories of regulation when a new technology disrupts an existing industry.

6. We find that TNCs are charter party passenger carriers, and therefore we will exercise our existing jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act). In this decision, under the broad grant of authority pursuant to PU Codes § 5381 and 701, we create the category of TNC to accompany the existing category of TCP.

7. Section 5353(h) provides two opportunities to qualify for the rideshare exemption: Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in § 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

8. PU Code § 5353(h) exempts transportation of persons between home and work locations or of persons having a common work-related trip in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in § 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

9. The section also states the exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision does not include the recovery of actual costs incurred in owning and operating a vanpool vehicle, as defined in § 668 of the Vehicle Code.

10. It is reasonable to conclude that TNCs do not fulfill the rideshare exemption and actually are for-hire transportation services.

11. PU Code § 5352 positions public safety as a key goal in ensuring that the public enjoys full access to the roadways.

O R D E R

IT IS ORDERED that:

1. Transportation Network Companies shall follow the safety and regulatory requirements as detailed in Section 2.2.4 of this decision.

2. Each Transportation Network Company (TNC) (not the driver) must have a license with this Commission. There are six types of charter party carrier permits/certificates. TNCs shall apply for a class P permit.

3. Each Transportation Network Company (TNC) is required to conduct a criminal background check for each driver prior to that applicant becoming a TNC driver. The criminal background check must be a national criminal background check including the national sex offender database. The criminal background check must use the applicant's social security number and not just the applicant's name. Any felony criminal conviction within seven years prior to the date of the background check for violent crime, a sexual offense, a crime involving property damage, and/or theft will deem applicant ineligible to be a TNC driver.

4. We require the Transportation Network Company (TNC) or an authorized third party such as Triple AAA or AAMCO to conduct the 19-point car inspection and for the TNC to maintain the record of such inspection in case of an audit.

5. We require that each Transportation Network Company file its insurance policies under seal with the Safety and Enforcement Division as part of applying for a license.

6. Until the Department of Motor Vehicle (DMV) Employer Pull Notice Program is available for use by Transportation Network Companies (TNC),

TNCs shall perform, prior to allowing a driver on the platform and quarterly thereafter, driving record checks through the DMV in order to ensure that drivers meet applicable requirements. The DMV check criteria shall provide that a user may have no more than 3 points within the preceding 3 years, no "major violations" (reckless driving, hit and run, or driving with a suspended license conviction) within the preceding 3 years, and no driving under the influence conviction within the past 7 years.

7. 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.

8. Transportation Network Companies must submit a plan within 90 days of the issuance of this decision to the Safety and Enforcement Division to explain how they plan to ensure that this new form of transportation service does not create a divide between the able and disabled communities.

9. Within 45 days after the effective date of this Decision, the Commission will post a Transportation Network Company Application Packet on its website, and Transportation Network Companies currently operating in California must file their Transportation Network Company Applications with the Safety and Enforcement Division 60 days thereafter if they wish to continue operating.

10. Uber is required to demonstrate to the Commission within 30 days of the issuance of this decision that it maintains commercial excess liability insurance policies providing a minimum of $1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers in transit to or during trips arranged through the Uber app, the Commission reserves the right to require Uber to obtain a TCP permit through Commission resolution.

11. UberX does meet the Transportation Network Company (TNC) definition and should apply for a TNC license.

12. Taxicab Paratransit Association of California's motion to compel discovery is denied without prejudice.

13. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
(Workshop Report)

FILED
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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	**R. 1212011**

JOINT WORKSHOP REPORT
FOR WORKSHOP HELD ON APRIL 10 - 11, 2013

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May 17, 2013

I. INTRODUCTION

Pursuant to Rule 1.8(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), The Taxicab Paratransit Association of California ("TPAC") and TransForm, submit this Joint Workshop Report on behalf of the following parties: The Center for Accessible Technology; The Greater California Livery Association ("GCLA"); Luxor Cab Company ("Luxor Cab"); The International Association of Transportation Regulators ("IATR"); The Personal Insurance Federation of California ("PIFC"); The San Francisco Cab Drivers Association; The San Francisco Limo Union; the San Francisco Medallion Association; The San Francisco Municipal Transportation Agency ("SFMTA"); The San Francisco Airport Commission ("SFO")[1]; SideCar Technologies, Inc. and Side.cr LLC (together, referred to as "SideCar"); TPAC; Tickengo, Inc.; TransForm; Uber Technologies, Inc. ("Uber"); The United Taxicab Workers ("UTW"); The Utility Reform Network ("TURN"); and Zimride, Inc. ("Zimride").

II. PROCEDURAL HISTORY

On December 27, 2012, the Commission issued the Order Instituting Rulemaking (OIR) which initiated this proceeding. The stated goal of the OIR is to "assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these new [Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services ("NOETS")] business models."[2] Subsequent to the parties filing their initial and reply comments, Administrative Law Judge Robert M. Mason III, issued his ruling setting a prehearing conference for February 15, 2013. Thereafter, the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling ("Scoping Memo") was issued on April 2, 2013, which required the parties to attend a workshop to consider the issues outlined therein. On April 10th and 11th, 2013, the parties attended the Commission's workshop in San Francisco at the Commission's offices.

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[1] SFMTA and SFO were also represented by the San Francisco City Attorney's Office.

[2] *Order Instituting Rulemaking on Regs. Relating to Pas. Carriers, Ridesharing, and New Online Enabled Trans. Sers.*, R1212011, p. 2.

The workshop sessions were publicly noticed and open to the public, and instructions were given by the Commission's Policy and Planning Division that public comment was to be communicated to the Commission only through the Commission's Public Advisor's Office and that public comment would not be permitted at the workshops. However, active workshop participants included representatives of the aforementioned Parties, as well as individual members of the public. Commission staff from the Commission's Policy and Planning Division facilitated the workshops, while Commission staff from the Commission's Safety and Enforcement and Legal Divisions attended the workshops in an observation capacity. This report covers the following general topics: (1) jurisdiction; (2) public policy issues; (3) transportation access; (4) proposed modifications; and (5) general considerations. The workshop format was structured loosely, and due to the large number of participants, Parties did not always have the opportunity to respond to the questions posed by Commission staff or rebut statements made by adverse Parties. Therefore, this Workshop Report seeks to record Party positions actually expressed during the workshop and is not intended to provide a comprehensive summary of any one Party's position in this proceeding.

III. JOINT WORKSHOP REPORT

a. JURISDICTION

i. Which Label Applies to NOETS Operations?

NOETS' Asserted That They Are a Software Platform

Uber stated that it is a technology company that has developed a software platform that allows riders to request transportation services from either TCP holders or taxicab drivers. As a point of clarification, at the workshop Uber stated that, currently, Uber App allows a rider to make a request to the following three types of transportation providers: (1) TCP holders; (2) taxicab drivers ("Uber Taxi "); and (3) rideshare drivers ("UberX"). Uber further stated that UberX drivers are compliant with the terms and conditions of a settlement agreement entered into in January 2013 between Uber and the Commission's Safety and Enforcement Division ("SED").

Uber stated that it neither owns nor leases any vehicles, nor does it employ any drivers. In addition, Uber stated that it does not supervise, manage or control any vehicles or drivers that perform passenger transportation services. It contended that it is entirely a software platform that facilitates a request between riders and drivers providing the transportation service. Uber compared itself to sites like Expedia.com, Hotels.com, and Travelocity.com. Uber asserted that the transportation service providers who use the Uber App, in the case of taxis, are subject to regulation by local agencies, including the SFMTA, and, in the case of limousines, by the CPUC. Uber stated that it is a software provider and not a transportation service provider, and thus, not subject to regulation either by local agencies as a taxicab company or by the CPUC as a charter party carrier. With regard to ridesharing, Uber stated that it is in compliance with the settlement agreement that it entered into with the Commission's SED.

Uber also stated that Uber Taxi's rates are set by local taxicab regulations. With regard to TCP holders, Uber contended that the Commission does not regulate rates; rather the Commission allows TCP holders to set their own rates. Uber stated that it negotiated a standardized rate schedule with TCP holders, under which riders can request transportation services from TCP holders by using the Uber App. Uber contended that it would be very confusing to riders if every single TCP holder using the Uber App had a different rate schedule. Furthermore, Uber stated that on behalf of the TCP holder, Uber handles the payment processing (via a third party credit card processor) for each trip requested and taken via use of the Uber App. The TCP holder pays Uber a fee of 10% to 20% of the fare, depending on the service.

To further comment on the software designation, SideCar indicated that it is neither a transportation nor a dispatch service and stated that there is a very important distinction between the network operator and the people actually providing the rideshare transportation. SideCar stated that, as such, it is entitled to the same protections granted to other interactive computer service providers protected under the 1996 Federal Telecommunications Act. SideCar noted the significance of these federal protections and directed the Commission's attention to the Federal Trade Commission's recent statements in the regulatory proceeding before the Colorado Public Utilities Commission, which emphasized that regulation should not be based on rhetoric or speculation about possible public harms.

The Ridesharing NOETS Asserted That Cal. Pub. Util. Code § 5353(h) is Applicable To Their Operations.

SideCar's representative stated that its ridesharing app allows for individuals who are seeking a ridesharing opportunity to connect with each other. SideCar indicated that voluntary donations allow the passenger to contribute to the cost of the ride incurred by the driver. SideCar stated that the company's terms of service specify that the SideCar App cannot be used for any commercial purposes. Sidecar stated that the ridesharing service is designed to be legal; the mobile application permits people to connect for legal ridesharing. SideCar stated its view that, as a result, there is no jurisdiction to regulate its communications service.

In explaining its mobile app, Lyft's representative stated that one of the reasons for the creation of the Lyft App was to minimize barriers to ridesharing in order to facilitate the general application of the ridesharing model to the public as a feasible means of transportation. Lyft cautions that additional barriers to ridesharing platforms will undermine the benefits that can come from bringing ridesharing to the public.

Tickengo, stated that it is a true ridesharing NOETS because it instituted a cap on the amount of money that a community driver can receive annually from giving rides to fellow citizens. Tickengo asserted that not all NOETS have drivers acting as taxis. Tickengo stated that it is similar to the government-run website 511.org in that it was created with the aim of helping people share rides. On Tickengo, users have to schedule rides by entering a requested date, time, and destination in advance. The goal of Tickengo is to be green and reduce pollution and congestion, not to create a new fleet of taxis competing unfairly with existing ones. Tickengo caps how much drivers can make per year based on the American Automobile Association's annual cost of operating and owning a vehicle, which is adjusted annually based on gas prices, inflation, and other factors. Tickengo proposed that the CPUC define a simple and easy-to-administer dollar cap per year to clearly and accurately distinguish between ridesharing and commercial transportation.

Uber stated that it does not consider the use of the Uber App for requesting transportation service with non-TCP drivers its core business. Rather, Uber explained that it intends to include UberX only so long as the CPUC permits other companies that compete with Uber to do so. Uber stated that it was not taking a position in the rulemaking proceeding on whether the

Commission should allow ridesharing (through use of non-TCP drivers) or what terms and conditions that the Commission should impose on such ridesharing services. As a result, Uber limited its comments and participation in the Workshop to its core business – making the Uber App available to riders to request transportation services from licensed TCP holders and taxi drivers.

The Contentions of Parties from the Limousine and Taxicab Industry that NOETS Provide a Taxicab Service

Participants such as TPAC, the SFMTA/SFO/IATR, the GCLA, the SF Cab Drivers Association, the SF Medallion Holders Association, and others, stated that regardless of the technological aspect of the NOETS business model, the physical or real world aspects of NOETS transportation system meets the standard definition of a taxicab service and as such are simply illegal.

Industry members and the SFMTA/SFO/IATR point to several NOETS operational factors that, in their opinion, prove that NOETS are bandit taxicab operations. For instance, the representatives from the SFMTA/IATR and TPAC contended that the NOETS calculate fares, or donations, based on distance and time. They elaborated that the NOETS use of GPS data from a smartphone to calculate a fare based on time and distance meets the definition of a taximeter, one of the only two distinctions between livery and taxicab transportation services. The SF Medallion Holders Association stated that another factor is that the NOETS meet the definition of on-demand services, meaning that shortly after a ride is requested, a driver is dispatched to that request. The representative for SFMTA/IATR and counsel for SFMTA/SFO argued that NOETS fit the statutory definition of charter-party carriers, but operate like taxicabs. They stated that if the Commission does not regulate NOETS as charter-party carriers, it should allow local entities to regulate them as taxicabs.

With regard to rideshare NOETS, parties such as the SF Cab Drivers Association, UTW, and the GCLA disputed that NOETS fit within the Commission's rideshare exemption. Counsel for SFMTA/SFO stated that the existing statutory definition of rideshare is clear; driver and riders must have a common work-related destination, and the rideshare must be incidental to the primary purpose of the driver's trip. The exemption from regulation is designed to encourage the

sharing of trips that a driver is already planning to make, not to encourage drivers to make trips so that they can charge for the ride. The SF Cab Drivers Association contended that Lyft's practice of scheduling drivers for ten hour shifts or SideCar's attempt to entice new drivers to the site by telling them that they can make $30 per hour, is evidence that the NOETS rideshare drivers are providing rides for profit. Moreover, the SFMTA/SFO asserted that the typical Lyft or SideCar ride is not incidental to the purpose of the driver. The consensus among the taxicab industry representatives is that these actions do not meet the definition of ridesharing. The SF Cab Drivers Association stated that these actions do not meet the Public Utilities Code definition of ridesharing and that use of the term ridesharing to describe services that Lyft, Sidecar or Uber provide is inappropriate and deceiving.

The SF Medallion Holders Association postulated that since ridesharing NOETS calculate suggested donations using distance and time, they have the ability to determine when the driver crosses into for-hire transportation. When asked whether or not Lyft or SideCar tracks this type of information, Lyft stated that they do not currently use a driver's mileage or time as the means to determine commercial use. The representative from Lyft asserted that there is no current legal test to determine when a community driver passes from protected ridesharing to commercial activity and that the tests proposed by TPAC and others are unworkable, inherently arbitrary and will necessarily not reflect the true costs of any particular driver. SideCar also stated that it did not use mileage or a dollar amount as a proxy to measure impermissible commercial purposes. SideCar asserted that clarifying the definition of legal ridesharing by adopting some bright line test could support the public benefits of ridesharing.

TPAC disputed Uber's claims that it does not exert any control over the provision of transportation services to customers. TPAC contended that Uber possesses control over many factors of the transportation service, including, but not limited to, how fares are calculated, rates, what forms of payment are accepted, dress code, vehicle cleanliness standards, and the rating of the drivers. The representative from the Limo Union stated that he is an Uber partner/driver and agreed with TPAC's statements by explaining that Uber issues a driver quality report card and dispatch acceptance rate. The representative from the Limo Union stated that Uber sends out e-mails to drivers about their performance, imposes punitive measures if a driver does not meet Uber's standards, and unilaterally sets Uber Black rates.

Furthermore, TPAC and SFMTA/IATR stated that NOETS and taxicabs present the same issues that are specifically addressed by local taxicab regulations. TPAC/SFMTA/IATR stated that, for instance, in the area of traffic, NOETS and taxicabs present identical issues such as the staging of vehicles in high volume areas and the clogging of intersections while soliciting or obtaining payments. TPAC continued that municipalities and county governments regulate the number of taxicabs in response to very local considerations of supply, demand, traffic, public safety and other issues, whereas, with NOETS, local regulators have no control over the number of vehicles providing transportation services for compensation on the road. Other problems present themselves, such as access to services, blacklisting of particular users, environmental issues, and safety issues such as vehicle maintenance. TPAC and SFMTA/IATR stated that all of these issues are applicable to NOETS and addressed by local regulation of taxicab industry.

Who has jurisdiction over taxicabs?

Participants from the taxicab industry, the limousine industry, and others acknowledged that the Commission regulates certain passenger motor carriers and that municipal and county governmental agencies regulate taxicabs. SFMTA/IATR pointed out that California is unique in this configuration, as many jurisdictions across the country localize regulatory control over livery and taxicab services at the municipal or local government level. But, regardless of this jurisdictional distinction, TPAC's representatives asserted that by labeling the NOETS operations as taxicabs, the Commission does not lose jurisdiction. The Commission, as well as local authorities, have jurisdiction over illegal taxicab operators.

Several parties from the taxicab and limousine industry commented that it is unclear why the Commission is even entertaining NOETS operations, which in their opinion, are illegal. The representative from the SF Medallion Holders Association stated that even if the Commission accepts the NOETS claim that they are merely software companies, there is still the issue of unlicensed drivers operating without any oversight or TCP holders who are operating as taxicabs. From the industry's perspective, these NOETS are considered to be taxi competitors by the public.

SFMTA/IATR commented that the taxi industry is a highly regulated and managed system and to simply flood the street with vehicles that compete with taxis undermines a city's ability to regulate its public transportation system. For instance, municipalities control the supply of taxi operators given urban environmental issues specific to a given city. SFMTA/IATR stated that it does not make sense to control the number of taxis on the road if there are an unlimited number of for-hire non-professional drivers on the street.

UTW commented that taxicabs are regarded under state law as an essential government function. Promoting safe and reliable taxicab service is state policy, and the economic viability and stability of taxicab transportation is regarded as a matter of statewide importance.

What is the historical reason for the distinction between taxis and limos?

Luxor Cab stated that the distinction is rooted in the on-demand nature of the taxicab service, and the prearranged nature of a limousine service. Taxicabs provide on-demand service that by its very nature poses unique regulatory issues. For instance, TPAC explained that in the typical street hail situation, a passenger is in a vulnerable position because she lacks the ability to negotiate with the taxicab. Since there is an immediate need for transportation services, the situation is ripe for an unscrupulous person to take advantage of the passenger. As such, regulators stepped in to make sure that there are certain standards in order to protect the passenger. For example, setting fixed and industry standardized rates to prevent price gouging in times of need, instituting commercial insurance requirements, and requiring vehicle checks to ensure passenger safety.

The issues particular to the on-demand scenario are typically not present in the limousine context because the service is negotiated in advance. Lyft stated that the CPUC was initially the Railroad Commission, and originally regulated various forms of transportation that were outside the cities' jurisdiction such as trucks and trains. Lyft stated that taxis were regulated by cities, and limousines came later, and the legislature eventually accepted them under the Commission's jurisdiction. Therefore, there are two key regulatory distinctions between the two services. The first distinction is prearranged versus on-demand service. The GCLA explained that a limousine service is prearranged and the terms of the agreement are represented in a written waybill that contains all of the pertinent information about the ride before the trip begins. Whereas, taxis are

completely on-demand. As Luxor Cab described, the consumer typically requests taxi service within minutes of actually needing a ride.

The GCLA continued that the second distinction is the manner in which the fare for the transportation service is calculated. Thus, with a limousine service, the fare is negotiated between the passenger and the company, with each limo setting its own fare, whereas, a taxi uses a taximeter to calculate an individual fare based on distance traveled and time elapsed during that particular trip. Counsel for SFMTA/SFO stated that taximeter rates fares are set by the city or county.

Several parties representing the taxi industry and taxi regulators commented that the distinction between taxicabs and limousines has been steadily degrading for some time. The SF Cab Drivers Association stated that limousines are starting to act like taxis. The UTW stated that violating limousines are in greater numbers and competing with taxis for on-demand business. The SFMTA/IATR commented that unregulated limos acting like taxicabs pose serious safety risks. Several taxi companies, the SFMTA/IATR, TPAC and others stated that illegal taxicab operations have been ongoing for a long time and the introduction of the NOETS is merely adding a technological component to an illegal activity.

Uber stated that the TCP holders, who obtain passengers via the Uber App, do not functionally meet the definition of taxi cabs in providing transportation services to customers. Uber noted during the workshop that the Commission has made many distinctions between taxis and non-taxis in decisions regarding this issue of whether a transportation provider is functionally acting as a taxi cab. Some of these decisions were raised in the workshop. Uber contends that one of the key distinctions made by the Commission is whether the transportation service provider has the appearance of a taxi (top lights, taximeter on the dash, specific paint scheme, etc.) and the vehicles used by the TCP holders who provide transportation services to passengers using the Uber App, do not have the appearance of a taxi.

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How has smartphone technology affected the distinction between taxicab services and livery services?

The SFMTA/IATR discussed issues related to the regulatory distinction between taxi services and livery services. The SFMTA/IATR stated that, the distinction between the services has been blurred as a result of what she termed regulatory lag or the failure to evolve regulatory definitions to keep up with new technology.

From the perspective of the SFMTA/IATR, prearrangement has been rendered meaningless. The SFMTA/IATR explained that the Commission interpreted prearrangement as the time it takes a passenger to make a telephone call, contract for transportation services, and get picked up. The GCLA stated that historically, parties contracted at least a day before the ride was dispatched. The SFMTA/IATR stated that this distinction became ineffective when people started carrying telephones. Thus, one of the key methods to distinguish between limousines and taxi services has been eliminated by smartphone technology. In the modern context, prearrangement is not clearly defined. UTW commented that in contrast to the traditional limousine industry, which uses luxury vehicles, caters to a limited clientele and uses advance bookings, NOETS vehicles continuously circulate and gravitate towards busy areas in the same manner as taxis.

Uber stated that the Uber App helps ensure that transportation services by TCP holders are provided on a "prearranged basis" as required by State law and CPUC regulations. The Uber App requires that a number of separate deliberate steps must be initiated and completed by both the rider and the transportation provider before transportation service may be provided: 1) the rider must request transportation; 2) a driver must receive the request for transportation and agree to provide it; 3) the driver must drive to the rider's pick-up location; and 4) the driver must pick up the rider. In Uber's opinion, that process ensures prearrangement. Completion of this process necessarily takes time: between the time the transportation service is contracted for through use of the App to the time the transportation services commence. Under normal circumstances, Uber stated that there is typically an 8 minute lag between the request and pick-up. In Uber's opinion, this process, which the Uber App requires, ensures that the service is "prearranged" within the meaning of applicable CPUC precedent.

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The representative from SideCar stated that use of it software application to arrange a ride satisfies the concerns motivating the institution of a prearrangement requirement by allowing the user to identify and evaluate the driver prior to pick up, including by use of a rating system, and by maintaining a record of all rides and parties involved. Sidecar stated that the concept of prearrangement is flexible enough to accommodate innovation and asserted that if the purpose of prearrangement is to ensure that passengers retain the power of choice in selecting a driver, the SideCar app meets that need by allowing customer to view community drivers in the area, review their driver ratings, and choose the right driver.

Lyft stated that the ability of a customer to navigate the company log-in, and to choose a community driver constitutes prearrangement because it satisfies the concerns motivating the prearrangement requirement identified by TPAC and others.

A representative from the SF Medallion Holders Association responded that it is absurd to believe that the manner in which Uber describes prearrangement is satisfactory. From his perspective, if someone electronically hails a ride that is immediately dispatched to them, that is a taxi service, not prearrangement. TPAC echoed this sentiment by stating that 8 minutes does not meet the definition of prearrangement and that Uber markets itself as an on-demand service.

Tickengo stated that it currently implements a 30-minute minimum pre-arrangement requirement. Tickengo further stated that its ride requesters must enter a date, time, and destination at least 30-minutes in advance. Tickengo asserted that true ridesharing does not involve commercial drivers wandering around neighborhoods looking to give immediate rides like taxis. Tickengo stated that its 30-minute minimum pre-arrangement makes the most sense today.

The SFMTA/IATR stated that the second distinction, the taximeter, is not adequately defined under state law. The general definition of a taximeter is a device that measures time and distance. The SFMTA/IATR explained that smartphones have again destroyed this distinction because a smartphone can calculate a fare based on distance and time. The SFMTA/IATR stated that the national regulatory bodies that regulate weights and measures are currently meeting in order to understand how to apply smartphone technology to the for-hire transportation context,

and until a decision is reached, in the SFMTA/IATR's opinion, the use of a smartphone to calculate a fare (or donation) is simply illegal.[4]

There was a general consensus among the participants from the taxi and the livery industries and transportation regulators that the distinction between the two services should be reinforced. The UTW stated that there is an inherent incompatibility in the laws regarding livery and taxi services. With limousines in greater numbers and illegally competing with taxis, there is an urgent need to create clear regulatory distinctions.

Uber stated that many of the arguments that the taxi industry and SFMTA/IATR are making in this rulemaking have been made before in prior proceedings before the Commission and have been rejected. Uber noted that in 1993, for example, the Commission staff conducted a study to assess the claims of the taxi industry and airport authorities that the Commission's policies and practice in regard to issuance of charter party carrier permits was increasing congestion on streets, highways and at the airports.[5] The Commission concluded on the basis of the study conducted by its staff that, contrary to the claims of the taxi industry, the Commission's policies regarding issuance of charter party carrier permits reduced rather than increased congestion. The reasons for this is that Commission licensed charter party carriers typically carry more persons per vehicle that other vehicles. Furthermore, Uber stated that in 1989, the Commission considered and rejected taxi industry proposals for a minimum time period in advance of providing transportation for the service to be "prearranged."[6] Uber stated that the Commission based its decision on the grounds that such a requirement is unnecessary and would be contrary to the public interest.

SideCar indicated that there is a clear distinction between its peer-to-peer service, which offers a mechanism for rideshare matching, and existing transportation services. SideCar stated

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[4] The SFMTA stated that Philadelphia solved this problem by allowing smartphones to measure time, but not distance. To her, this was an elegant solution because a limo can choose to set its fares based on an hourly rate. But, when distance is introduced into the smartphone calculation, the fares become problematic because the device has not been approved by any regulatory agency.

[5] *Order Instituting Rulemaking concerning the regulation of Charter-Party Carriers of Passengers regarding implementation of Assembly Bill 1506 (Stats. 1990, ch. 518), concerning insurance limits, maintenance records requirements, and the effect of regulation on highway congestion*, D. 93-11-069, R. 93-06-033 (Filed June 23, 1993).

[6] *Order Instituting Rulemaking concerning the regulation of passenger carrier services*, D. 89-10-028, R.88-03-012 (Filed March 9, 1988).

that it is neither a transportation nor a dispatch service and explained that because SideCar requires destination information as an element of the trip, it does not provide "on demand" service in the way of taxicab services and should not be regulated as such.

ii. Is there a third way regulatory approach for NOETS operations?

The SFMTA/IATR stated that the idea that there is some third way to regulate these NOETS is offensive to the men and women who work as regulators protect public safety and access. The SFMTA/IATR pointed out that the taxi industry is a highly managed transportation network that requires regulations to ensure universal access to door to door transportation in an urban environment.

TPAC stated that it believed that the Commission had inappropriately provided pre-approval to a third-way regulatory approach via its settlement agreements with NOETS such as Uber and Lyft. TPAC stated that the third-way regulatory approach affected by the NOETS settlement agreement amounted to the deregulation of the taxicab industry, and as such violated state law. TPAC explained that since NOETS use drivers holding nothing more than California driver's licenses, they are merely "bandit" taxicab operations that use apps to solicit customers. TPAC quoted Cal. Gov. Code § 53075.8(a) which provides that "taxicabs operating without a proper taxicab certificate, license, or permit have exposed customers to unscrupulous persons who portray themselves as lawful operators." TPAC further affirmed that it is not appropriate for the Commission to create new classifications to accommodate bandit taxicabs. TPAC stated that the Commission should also not circumvent the Legislature's clear directive to leave the regulation of taxicabs to local governments. TPAC quoted from Cal. Gov. Code § 53075.8(b) which states that the "Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare." TPAC pointed out that Cal. Gov. Code § 53075.8 grants local agencies the power to terminate the telecommunication services of bandit taxicab operators because the "termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare." TPAC concluded that there is no new third way regulatory approach that could or should allow the NOETS' illegal taxicab operations to continue. TPAC stated that to do so would be inconsistent with state law.

Counsel for the SFMTA/SFO stated that NOETS have presented no credible argument for a "third way. The SFMTA/SFO stated that there are two possible regulatory schemes, the local system for taxicabs and the state system for charter-party carriers, but there is no justification for subjecting NOETS to lesser standards than those applicable to all other charter-party carriers.

Luxor Cab stated that the topic of a third way to regulate NOETS is misleading because it assumes that there is something new about the NOETS, when taxi companies have been using similar technological services for several years before the inception of Uber, Lyft and SideCar. TPAC contends that the Commission should not circumvent the legislature's mandate regarding taxis and that the NOETS should be brought into compliance with existing regulatory requirements. Parties such as the SFMTA/IATR, the GLCA, UTW, the SF Medallion Holders Association, the San Francisco Cab Drivers Association, and Luxor Cab Company agreed that there should not be a third way. UTW commented that the premise of the rulemaking is flawed in that it is based on an assumption that NOETS are distinct from other forms of transportation on account of their use of new technology, whereas taxis and others are using the same technology.

SideCar asserted the need for regulatory recognition of the innovative combination of services offered by communications platforms such as SideCar, in combination with non-commercial ridesharing. SideCar stated its belief that the ridesharing exemption could benefit from clarification in order to support the public benefits of ridesharing. SideCar also noted that, to the extent that there are drivers that seek to earn a profit and make a living from driving, SideCar believes that a level playing field with respect to licensing requirements – one that allows for and encourages innovation in business models – should be allowed. SideCar stated that the existing regulatory structure must change to allow new forms of transportation services to exist. SideCar stated that the existing regulatory framework favors incumbents and prohibits alternative transportation models, including those that contemplate a different relationship between network operators and the people providing transportation via ridesharing services.

Lyft stated that, to the extent the Commission finds that it should regulate to protect public safety interests, it is supportive of a third way regulatory approach because, if applied to NOETS, the current regulatory scheme would create unreasonable barriers for ridesharing

services to enter the market. For instance, while commenting on the viability of ridesharing platforms, Lyft stated that there are a variety of potential usages on their platform: (1) occasional drivers or commuters, such as people who only share rides to and from work; and (2) more frequent drivers who may share rides for numerous hours on a single day. Lyft contends that, based on its 6 years in the carpooling and ridesharing business, for any ridesharing platform to truly work there has to be a match between the supply and the demand for rides, and a base of more frequent drivers must be present in order to maintain adequate supply to meet demand. Lyft believes that this is key to ensuring the viability of ridesharing platforms. Lyft pointed to several key studies on ridesharing that indicate that there must be a critical mass of users so that there is always reliability on the platform.

b. PUBLIC POLICY ISSUES

i. Safety Issues:

Passenger Safety

Taxi Safety Requirements

The SFMTA/IATR outlined the safety check requirements that taxis are required to follow. The SFMTA/IATR has instituted a fingerprint based background check called the "Live Scan Criminal Background Check." Additionally, the SFMTA/IATR is in the process of expanding its search parameters to a national level. Also, all taxi drivers are subjected to a 10 year Department of Motor Vehicle license check. All taxi drivers are required to undergo two training programs. The first is a four day program that covers the following topics: (1) geography of San Francisco; (2) strategies for protection against crime; (3) customer service; and (4) regulatory compliance. The second program is a one day course that focuses on paratransit service requirements, traffic safety, disability sensitivity and regulations for operating at the airport. Furthermore, the State of California requires the drug testing of taxi drivers in four circumstances: (1) pre-employment; (2) permit renewal; (3) after an accident; or (4) for cause. Every city in the State of California has implemented the drug testing requirement or is in the process of doing so. Lastly, all vehicles are inspected upon entry into the market. The SFMTA/IATR applies mileage entry and exit limits and inspects high mileage vehicles at least twice per year.

TCP Safety Requirements

The GCLA outlined the Commission's safety check requirements. All TCP drivers are required to undergo a pre-employment drug test. Furthermore, the drivers are subject to random drug and alcohol testing as well as testing after any type of accident. The Commission also requires a criminal background check to be undertaken on a national level, and each driver is entered into the California Department of Motor Vehicles' pull-notice program. Moreover, each driver undergoes 80 hours of training covering the following topics: (1) maps; (2) procedures on accidents; (3) interactions with clients; (4) protocol training; and (5) vehicle registration requirements. The GCLA also stated that the charter industry is inspected by the California Highway patrol and the San Francisco International Airport on an annual basis.

Public Safety Policies Implemented by the NOETS

Lyft stated that trust and safety is an incredibly important component of a good customer relationship. As such, Lyft proactively implemented the following safety requirements: (1) driving checks with the DMV; (2) criminal background checks with no occurrences of theft, violent crimes or property damage allowed; (3) drivers must be 23 years of age and have maintained a US driver's license for at least a year; (4) only four-door cars no older than a model year of 2000 are allowed; and (5) and the vehicle is inspected for safety and cleanliness. With regard to the DMV checks, the representative from Lyft expounded that they use the following criteria: (1) no more than one accident in the past 18 months; (2) no more than three minor violations in the past three years; (3) no major violations in the past three years; (4) no DUI or drug related violations within the last seven years. In response to Lyft's comments that its driver DMV checks were more restrictive than those applicable to taxi drivers, Mr. Ed Healy stated that a taxi driver must have a completely clean record.

SideCar stated that it has implemented the following public safety measures: (1) criminal background checks; (2) driving record checks, which includes a prohibition against reckless driving charges; (3) a driver orientation and training program; (4) vehicle screening based on reasonable suspicion of a defect, which might be initiated by customer complaint; (5) drug screening based on reasonable suspicion, which also might be initiated by customer complaint.

SideCar's representative indicated that it is very aware of its public safety responsibilities and it takes steps to prescreen its drivers in order to increase the safety and reliability of the platform.

Uber reiterated that it neither owns nor leases any vehicles, nor does it employ any drivers. In addition, it does not supervise, manage or control any vehicles or drivers that perform passenger transportation services. Uber stated that as a software provider, and not a transportation service provider, it is not subject to regulation by local agencies as a taxicab or by the CPUC as a charter party carrier. The drivers and vehicles that arrange transportation services with passengers through use of the Uber App are, however, subject to regulation by State and local agencies. Charter party carriers are required by Uber's terms and conditions of use to remain in compliance with all applicable CPUC regulations pertaining to their services, including all safety and insurance regulations. Taxis are similarly required by Uber's terms and conditions of use to comply with all applicable regulations of local taxi regulatory authorities. Uber further stated that no public purpose would be served by subjecting Uber to additional regulation duplicative of the existing State and local regulations applicable to the licensed charter party carriers and taxis that arrange transportation services through use of the Uber App.

Although not a part of Uber's core business, and only provided pursuant to the settlement agreement between Uber and the Commission's SED, non-TCP holders that accept requests for transportation services through use of Uber's App are required to undergo the following public safety checks: (1) criminal background checks; (2) DMV record Check and pull notice; (3) drug and alcohol testing; (4) and other requirements that are contained within the settlement agreement.

Disputes regarding Implementation of the NOETS Public Safety Procedures

The SFMTA/IATR stated that the public safety policies of the NOETS are not under the scrutiny of any regulatory agency. Thus, SFMTA/IATR contended that the public is left to rely on self-interested representations by parties who have not opened their records to regulatory agencies.

Mr. Ed Healy described his experience of applying to become a driver for Lyft and SideCar. Mr. Healy indicated that at no point during his application process did either company ask him about whether or not he was qualified to transport passengers. Furthermore, he stated

that the most difficult question that he was asked at Lyft was "If you had a passenger in your car for ten minutes, who would you want in your car." The most difficult question that he was asked at SideCar was "If you were a car, what kind of car would you be?" Mr. Healy further stated that Lyft did not perform a mechanical inspection of his car and that SideCar's vehicle inspection consisted of him uploading a picture of his vehicle to their website. Mr. Healy also stated that the representatives from Lyft and SideCar did not look at the mileage of his car or confirm the VIN number to ensure that it matched his proof of insurance. Mr. Healy stated that he had gone through the application process a few months earlier, and did not know the current requirements of companies. Mr. Healy further stated that he had written about it, and that Lyft and Sidecar might have made changes because of what he wrote. He contended that he was hired by both companies and was told to download their apps so he could go to work, although he did not do so because by signing their terms and conditions he would have agreed not to sue. Lyft responded that Mr. Healy was rejected by Lyft before the point in the process at which Lyft requires driver applicants to submit to background checks and other safety measures.

SideCar indicated that if the Commission determined that it had some measure of jurisdiction to regulate the operations of ridematching communications platforms, that the Commission should focus on instituting narrowly-crafted, public safety-related regulations.

Driver Safety

Luxor Cab stated that many aspects of providing transportation services to strangers contribute to the occupational risk of homicide and other forms of violence against drivers. Luxor Cab indicated that the passenger transportation industry has one of the highest levels of occupational homicide, which is even higher for illegal taxicab operators. The taxi industry addresses these occupational risks by providing driver training and requiring safety equipment. For instance, the SFMTA/IATR provides driver training for: (1) how to deal with intoxicated customers; (2) racial tensions in the taxicab; (3) altercations with other motorists; and (4) fare disputes. Furthermore, to protect drivers, the SFMTA/IATR requires security cameras, which act as a deterrent to criminal behavior and provide a mechanism for tracking complaints.

Luxor Cab further questioned whether NOETS operators recognized that there was an elevated risk of danger to the drivers and asked what steps are being taken by the NOETS to deal with that risk.

Waybills and Safety

TPAC stated that the issue of a waybill touches upon all of the same safety issues raised by prearrangement because it is vital to preventing overcharging, tracking who is responsible for property damage, and other matters. Furthermore, TPAC stated that given the basis for the prearrangement distinction, ensuring that riders and drivers know who they are riding with before the passenger gets in the vehicle supports public safety. Luxor Cab, the GCLA, and other members of the taxi industry stated that waybills are important for safety as they provide clear records of a driver's activities. Mr. Healy further commented that the police need to be able to monitor compliance, so there needs to be a mechanism to enforce waybill requirements.

Uber stated that the waybill requirement applies to TCP holders, including all TCP holders that accept requests for transportation services from riders through use of the Uber App. Uber stated that these waybill requirements do not apply to its operations because it is a software company not a transportation service provider or charter party carrier. Uber stated that its App provides a lot of the same information as is required on waybills and facilitates compliance by TCP holders with waybill requirements.

The moderators asked Uber how it was empowering TCP partners to adhere to the Commission's waybill requirement. Uber responded that it is not responsible for driver compliance, but that the driver gets all of the information necessary to complete the waybill and can do it themselves. The GCLA responded that prearrangement demands that a waybill is filled out prior to going out on a trip, and not about finding out the information once the passenger gets in the vehicle.

Lyft stated that it maintains detailed records of information that is contained in a waybill, and that they keep the information in perpetuity, subject to its terms of service and privacy policy.

SideCar indicated that its users' accounts contain detailed records of matched rides, which is an element of the communications platform that SideCar hosts. SideCar also stated that it does not delete those user records.

ii. **Insurance**

Comments from the Personal Insurance Federation of California ("PIFC")

The PIFC began the discussion on whether personal insurance policies are sufficient to cover passengers of NOETS such as Lyft, SideCar and Uber X. The PIFC stated that whether personal insurance policies will apply in the NOETS context is determined on a case-by-case basis. The controlling factor will be the terms of the personal insurance policy at issue. PIFC stated that most, if not all, personal insurance policies, especially those that are based on the standardized insurance policy forms created by the Insurance Services Organization,[8] contain exclusions for livery services. Thus, theoretically, the determination of whether a passenger is covered under the personal insurance policy of a NOETS rideshare driver depends on two factors: (1) whether or not the personal insurance policy contains an exclusion for livery services; (2) whether or not any payment made to the driver is determined to fall under that exclusion. The determination is dependent on whether a payment received by a NOETS driver is to be considered a "for-hire" payment, or a "shared-expense" payment. In response to a hypothetical presented by the SFMTA/SFO, the PIFC stated that it is likely that where the cost of the particular ride is more than the actual expense of the ride, that would be considered a livery or for-hire situation and fall under the livery exclusion.

TPAC further stated that "livery" or "for-hire" is generally defined as a driver charging more than the actual cost of transporting a passenger. Another applicable definition is a driver that is holding himself out to multiple potential customers as one that provides transportation services. The inevitable conclusion is that insurance policies consider livery or for-hire transportation services to be commercial activities that are not covered by personal insurance policies.

The PIFC stated that in the event of an accident involving a NOETS driver, a claims representative will have to make a determination as to whether or not the driver was engaged in a for-hire or shared-expense situation. The representative of the UTW questioned whether or not a claims representative's determination of for-hire versus shared expense will take into account the

[8] The Insurance Service Organization is not an insurance company. ISO provides advisory services and information to insurance companies. ISO develops and publishes policy language that many insurance companies use as the basis for their products.

total number of rides a driver has provided in a particular period of time. The PIFC's representative responded that she was unsure.

The SF Medallion Holders Association commented that the level of coverage is starkly different from commercial to personal insurance policies. The SFMTA/IATR requires all taxicabs to carry one million dollars worth of insurance, per accident. Whereas, the representative from PIFC confirmed that the state minimums for personal insurance policies are $15,000 for injury/death to one person and $30,000 for injury/death to more than one person per accident. All in all, the representative from PIFC stated that it is not clear whether or not personal auto insurance policies will provide coverage to NOETS drivers. Mr. Healy read from the PIFC's comments and responded by stating that the issue before the CPUC is not ridesharing but using a private vehicle as a livery service. Mr. Helay asked the PIFC representative whether California personal auto insurance rates would increase if insurance companies were required to cover all NOETS vehicles. The PIFC representative stated that it could if there was a massive scale of commercial use.

Lyft, SideCar, UberX Supplemental Insurance Coverage

Lyft stated that it has obtained a $1 million supplemental insurance policy that is designed to respond even if the underlying personal auto insurance policy does not provide coverage. Lyft's policy covers $1 million of third-party personal injury and property damage. SideCar indicated that the company had secured a $1 million excess and contingent liability policy, which replaced the $1 million guarantee program it had in place previously. Uber's representative stated that it also has the same supplemental insurance policy in the amount of $2 million.

Lyft commented that its supplemental policy has been designed to "drop down" in the event that the driver's underlying personal auto insurance policy does not respond. Additionally, Lyft stated that its supplemental policy is designed to provide coverage from the very first dollar. Lyft further stated that its supplemental policy is written in such a way so as to include every driver that is registered on the Lyft platform.

Several taxicab industry members and the SFMTA/IATR commented on the potential complex nature of the claims process that could be applicable to NOETS. From the perspective

of a taxi driver, if there is an accident, there is one insurance policy that is applicable, whereas, with the NOETS insurance coverage, there is a myriad of steps that need to be taken into consideration. First, the claimant must make a claim to the individual insurance carrier of the driver, who then decides whether or not there is coverage. If coverage is denied or if the policy limits of the underlying coverage are too low, the claimant must then make a claim to the NOETS whose insurer will decide whether to apply coverage. The UTW questioned whether a third party claimant would know that in the event of an accident with a Lyft or SideCar driver, that supplemental insurance policy is available. The response from Lyft was that: (a) it is the responsibility of the driver to inform the third party victim of the Supplemental Lyft Policy; and (b) that the existence of the Supplement Lyft Policy is well known. Mr. Ed Healy stated that he doubted that these policies cover what Lyft and Sidecar claimed that they covered, and requested that they show their policy. Mr. Healy also presented Desoto Cab's insurance policy with $1 million in coverage.

The SF Cab Drivers Association contended that since Lyft and Sidecar advertise that drivers can make up to $35 an hour, and the PIFC has stated that vehicles operating for profit are not covered by personal insurance, that the ridesharing NOETS were being deceptive by requiring the drivers to deny that they were operating for profit in order to have their personal insurance policies cover the accident. The SF Cab Drivers Association stated that this is insurance fraud by not disclosing the for-profit nature of their business in order to use the drivers' personal insurance policies for primary coverage. Lyft denied these contentions.

Tickengo stated that it operates similarly to the website 511.org knowing that true occasional ride sharing, with only expense-sharing, is covered by individual policies and that Tickengo is not a transportation company with commercial drivers or even drivers acting as commercial drivers.

Verifying Personal Auto Insurance Policies

The representative from the GCLA questioned how Lyft and Sidecar confirmed on a continuing basis, whether their community drivers' insurance policies are valid. Moderator Zafar expanded on this topic, indicating that with TCP drivers, the Commission is provided with insurance verification from the insurance companies thereby confirming insurance coverage.

She queried whether the NOETS have a similar system to ensure confirmation of personal insurance coverage. Lyft responded that there is no independent verification process that is currently in place for Lyft's community drivers because process is logistically impossible. Lyft stated that it records the expiration date of the policies of all drivers and requires that they confirm renewal of the policy in order to continue to use the platform as a driver. In addition, Lyft stated that just like every other California driver, a Lyft driver who is driving without personal insurance as required by statute would be in violation of the law and thus, it was highly unlikely that a community driver would be operating without adequate personal insurance.

Data Regarding Accident Rates and Denial of Coverage:

A representative from the taxicab industry asked about statistics concerning the number of claims that have been submitted to personal insurance companies from NOETS drivers and the associated denial rate of coverage. The representative from PIFC stated that she had surveyed her membership, but that none of the insurance companies are keeping track of that type of data, and as such, she could not comment on the question.

Fleet Insurance

TPAC's representative questioned whether the comprehensive fleet insurance of a taxi or limo company would apply to Uber fares. The SF Medallion Holders Association commented that with most of its membership, if a driver is working for Uber, the fleet insurance does not provide coverage. Uber countered, by stating that it believed that a taxi companies' fleet insurance would not be rendered inoperative if a taxi accepts an Uber originated fare.

Uber stated that TCP holders that arrange transportation service with passengers through use of its App must comply with all CPUC insurance requirements applicable to such TCP holders. Uber stated that it requires proof of insurance from each TCP holder that is allowed to use the Uber App. Similarly, taxis that use Uber's App must also comply with applicable local agency insurance requirements applicable to taxicabs. In addition to the insurance that TCP holders and taxis must maintain to comply with State and local agency requirements, Uber stated that it also has a liability policy totaling $2 million and an excess policy of $5 million applicable to transportation service requested from TCP holders and taxi drivers.

iii. Safety vs. Innovation

Several members of the San Francisco taxicab industry commented that the industry is not opposed by any means to innovation. They use Taximagic.com as an example of how innovation can work within an existing regulatory framework. The representatives from Luxor Cab stated that TaxiMagic entered the taxi industry by approaching all of the taxicab companies and presenting their platform as a means to increase business by using smartphones to electronically hail taxis. Luxor Cab commented that TaxiMagic works within their system so that the taxi company has complete records of all fares that originated from the TaxiMagic platform. Luxor indicated that they have been using the TaxiMagic platform since 2008, several years before NOETS like Uber were in existence. On the other hand, Uber did not approach the taxi companies in San Francisco, and essentially use the transportation assets of taxi companies (their drivers, vehicles, insurance, etc) without their permission. From the taxi industry's perspective, apps like TaxiMagic prove that innovation can be achieved within existing regulatory frameworks. Furthermore, TPAC stated that innovation will take care of itself and that innovation should not take away from public safety. Representatives from the Limo Union, Luxor Cab and Ed Healy commented that Tickengo has the closest approximation of true ridesharing.

SideCar detailed the measures that the company has implemented in order to balance safety and innovation: (1) criminal background checks; (2) driving record checks, which includes a prohibition against reckless driving charges; (3) a driver orientation and training program; (4) vehicle screening based on reasonable suspicion of a defect, which might be initiated by customer complaint; (5) drug screening based on reasonable suspicion, which also might be initiated by customer complaint. SideCar's representative indicated its screening process is intended to address safety, which, in turn, boosts the reliability of the matching service and communications platform. SideCar indicated that, to the extent that the Commission determined that it had some measure of jurisdiction to regulate the operations of ridematching communications platforms, which question has not yet been determined, that the Commission should focus on instituting narrowly-crafted regulations aimed at institutionalizing public safety measures.

iv. Promoting Fair Competition - Regulated Entities vs. Unregulated Entities.

TPAC commented that the goal of the Commission should be to create a fair system. In unbalanced situations, the market will correct itself and move towards balance, thus, competition will find a level playing field. In the instance of a regulated system versus an unregulated one, the natural inclination of the industry will be to move towards deregulation in order to avoid all of the costs of regulatory compliance. Consequently there will be no room left for a regulated industry.

Several parties including the SFMTA/SFO, TPAC, UTW, and the SF Cab Drivers Association contended that regulated taxis cannot compete with NOETS. UTW argued that to allow the NOETS to exist in their current unregulated form or subject to minimal regulation essentially creates a race towards the bottom with negative impact on safety and service. These groups contended that professional drivers will be pushed towards the NOETS business model because of lower operational costs. The representative from the SFMTA/IATR states that when this unregulated system devastates the regulated environment, no one will be left to provide safe and accessible door to door service to city residents and visitors.

In response to the moderator's hypothetical of how NOETS would ensure public safety and access if the taxi industry was destroyed because it could not compete, SideCar's representative expounded that it is their belief that their rideshare platform is not at odds with the taxi industry. From SideCar's perspective, the industries are complementary because they serve different customers and are authorized to provide transportation services in different ways.

The moderators asked if NOETS provide any benefits to competition or safety. Luxor Cab responded that they were an early adopter of the Taxi Magic app, which was an innovation not constrained by regulation. UTW's representative stated that his company has been using the Flywheel app for the past several years, and over 700 San Francisco taxis now use the app. GCLA responded that they want competition as long as it's on a level playing field; competitors should not be allowed to avoid the cost of doing business in the industry. TPAC and several taxi industry representatives stated that there are no additional benefits to NOETS because they do not adhere to the regulations and refuse to be accountable.

Sidecar responded that there are major social benefits to ridesharing and the ridematch service that SideCar provides, including, but not limited to, serving the public's evolving understanding of the sharing economy and facilitating the sharing of a capital intensive asset. SideCar also noted that the existing regulatory system prevented new business models from operating and that, to the extent that driver-users of SideCar's communications platform seek to make a profit, there should be a level playing field with respect to licensing that allows the regulation to joint the internet age.

Uber stated that the Commission should consider the Federal Trade Commission's written statement submitted to the Colorado Public Utilities Commission and attached to Uber's pre-workshop statement, which states that there are competitive benefits to NOETS.

The SFMTA/IATR quoted from Cal. Pub. Util. Code § 5352, which in the SFMTA/IATR's opinion, does not empower the Commission to consider competition over public safety. The Moderator responded by reading from the Commission's Mission Statement from its website which indicates that the Commission stimulates competitive markets where possible. Uber additionally asserted that the California courts have held that the promotion of competition is a factor that the Commission may consider in carrying out its regulatory function.

v. Accountability

Counsel for SFMTA/SFO commented that one of the problems is that the NOETS have decided that they are experts on the passenger transportation industry and therefore they get to decide what the appropriate level of self-regulation is. Counsel for SFMTA/SFO further commented that throughout the proceedings Lyft and SideCar have failed to present any reasons or evidence as to why they should not be subject to the same regulations as every other transportation service in the state or why they should not be held accountable to a regulatory agency. UTW said there is a vast difference between NOETS and taxis in terms of safety. UTW described the various layers of responsibility and accountability in the taxi industry, discussing obligations of the driver, the medallion holder and the company to the regulatory agency and the airport.

TPAC posed the question of whether any of the NOETS have staff that respond to consumer complaints or investigate driver safety issues. TPAC stated that the underlying issue is

that the regulatory agencies cannot police everyone, therefore, the companies in the industry are charged with some level of self regulation.

Lyft responded that they have a staff that handles support issues during the operating hours of the platform. TPAC followed up its question by asking whether Lyft sends out anybody to the scene of an accident to determine whether the driver was at fault and so forth. Lyft responded that the San Francisco Police Department carries out such investigations.

SideCar stated that it maintains a support staff of eight people that responds to customer complaints and issues and that accidents and complaints, depending upon their nature, may trigger a vehicle or drug screening.

Uber stated that it maintains community managers handle comments and complaints. The Uber representative indicated that they have not had an accident nationwide to date, but if it were to occur, the community managers would be in place to investigate such matters.

vi. Transparency

SFMTA/IATR, and several members of the taxicab industry, including Luxor Cab, the SF Medallion Holders Association, the SF Cab Drivers Association, TPAC, and the SFMTA commented on multiple occasions that they are not opposed to innovation. To them, it is an issue of transparency, because no one knows whether the NOETS' operations meet the standards applicable to the passenger transportation industry. Luxor Cab stated that the impression that the industry is left with, is that while SideCar, Lyft, and Uber seem to speak to the ideal of improving transportation services, they are also trying to avoid being transparent about what innovation they are actually bringing to the industry.

Many parties questioned why Lyft, SideCar and Uber's supplemental insurance policies have not been made available to the public. SFMTA/SFO commented that there is a real concern that no one can see the insurance coverage that Lyft, SideCar and Uber represent that they have. Moreover, she questioned the Commission's decision to ensure that the NOETS insurance policies would not be turned over to the public, even in the face of "Public Records Act" request. Lyft's representative stated that companies do not generally disseminate their insurance policies, but that the Commission's Safety and Enforcement Division has reviewed and approved it's supplemental insurance policy. The GCLA questioned the double standard applied to the

NOETS. All TCP drivers are required to have their insurance policies reviewable online, whereas, the NOETS are not required to provide any documentation to support their claim that their Supplemental Insurance Policies works to protect the public.

Uber stated that it is in complete compliance with all regulations in a very transparent way because transportation service from Commission-licensed TCP holders requested by a rider through use of the Uber App is already regulated by the Commission and transportation service from local agency-permitted taxicabs requested by passengers through Uber Taxi is already regulated by local taxi authorities. Given the use of regulated carriers, Uber contended that no public purpose would be served by imposing another duplicative layer of regulation on Uber. Uber stated that none of the regulations contained in GO 157-D apply to a software company, thus there would be no incremental benefit to the public by requiring transportation regulations to be imposed on a software company like Uber.

vii. Terms of Service / Disclaimers

The issue of the NOETS' terms of service touched various aspects of the workshop, but became a clear point of discussion during the discussion on insurance. TPAC presented the disclaimer language from the terms of service agreements of Lyft, SideCar and Uber, which provides that NOETS are not liable for the injuries or damages that occur as a result of the use of their platform. TPAC went on to point out that no regulated transportation company can use the same disclaimer language as the NOETS.

TPAC questioned why the NOETS maintain their Supplemental Insurance Policies if they believe that they are not an integral part of a passenger transportation system. TPAC further commented on the discrepancies between the statements made by Lyft, SideCar, and Uber regarding their safety measures and the disclaimers contained in their terms of service. For instance, TPAC quoted from SideCar's terms of service which states "You agree that your use of the service is at your own risk." Additionally, TPAC quoted Lyft's terms of service which states "We (Lyft) do not screen the participants using the services in any way" and disclaims any responsibility for bodily injury or death. Lastly, TPAC quoted Uber's terms of service which states "You understand therefore, that by using the application and the service, you may be exposed to transportation that is potentially dangerous, offensive, harmful to minors, unsafe, or

otherwise objectionable, and that you use the application and the service at your own risk." TPAC questioned why there is such a contradiction between the NOETS representations to the Commission and the NOETS terms of service agreements.

UTW further questioned whether the disclaimers within a NOETS' terms of service will allow its insurance carrier to avoid coverage. The PIFC commented that it was a possibility, but that the legal impact of the NOETS' disclaimers on their supplemental insurance policies is wholly dependent on the contractual language of each policy.

The NOETS responded on two fronts. First, they offer that they are software companies, not transportation companies. Second, there are very legitimate and logical reasons why software companies disclaim liability for services that they do not own, manage or wholly control. Uber contended that its terms of service agreement is drafted from the perspective of a software company that does not own the vehicles or employ the drivers that provide transportation services arranged through use of its App. Uber's representative also stated that TaxiMagic uses essentially the same language limiting its liability in its terms of service with taxi companies for the very same reason that Uber uses such language in its terms of service: software companies cannot assume liability for transportation service providers that use their applications where the software company does not own, manage or control the transportation service provider.

SFMTA/SFO further questioned the language of SideCar's terms of service that instructs drivers to ensure that their personal auto insurance policies do not contain exclusions for legally protected ridesharing. The assertion was that SideCar is representing to non-lawyers that they are considered to be engaged in legally protected ridesharing, when, from the perspective of the SFMTA/SFO, SideCar does not qualify for the exemption. SideCar's representative responded that SideCar believes that drivers-users of the SideCar mobile application that do not use the communications platform for commercial purposes are covered under the Commission's rideshare exemption.

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c. TRANSPORTATION ACCESS

Universal Pick-up Requirements

The SFMTA/IATR stated that all San Francisco taxis are subject to a universal pick up requirements, which means that any person who needs a ride has a right to obtain service from a taxicab. From an enforcement perspective, if a person is refused service, since all taxicabs are painted with identifying information, a person can call 311 to lodge a complaint against the taxi driver. The SFMTA/IATR will investigate the complaint and issue a citation if it is called for. Drivers are also subject to counseling regarding universal pick-up requirements. In terms of an enforcement mechanism for taxi companies that do not serve poor neighborhoods, the same complaint process is in place, where the SFMTA/IATR will aggregate complaints against a particular taxi company and enact procedures to ensure compliance with universal pick-up requirements. The GCLA stated that limousines are not subject to the universal pick-up requirement because all trips must be prearranged.

San Francisco's Paratransit System

The SFMTA stated that San Francisco possesses one of the world's largest subsidized transportation services and that all taxis in San Francisco are part of the paratransit fleet, which provides rides to the elderly and disabled persons. The SFMTA/IATR requires that each taxi driver undergoes disability training that which educates drivers on how to provide service to customers with special needs.

SFMTA and other parties stated that most taxi companies maintain several wheelchair accessible vehicles in their fleet, many of which operate as paratransit vehicles. For instance, Luxor Cab maintains forty ramped taxis for wheel chair accessibility. The SFMTA pointed out that if the taxi industry were to collapse under the pressure of unfair competition from unregulated transportation providers, it is these individuals, the elderly, poor, and the disabled that will be the first to suffer. Luxor Cab reinforced the SFMTA's sentiment by explaining that the paratransit system is a not-for-profit oriented service. For companies like Luxor Cab, there is a cross-subsidy that occurs where paratransit rides are balanced by lucrative ones. When the most lucrative rides are being taken by unregulated transportation services, a taxi company's ability to provide paratransit services is directly impacted.

Lyft pointed out that San Francisco is unique in using taxis as part of its paratransit system and that many other jurisdictions in California contract with transportation service companies to provide dial-a-ride services using vans equipped to serve ADA riders. The SFMTA/IATR responded that although Lyft is correct that there are other subsidized paratransit models, San Francisco is a true success story because it has reduced the average cost of a wheelchair accessible trip from $ 45.00 to about $12.00. SFMTA stated that if taxicabs were not used for paratransit trips in San Francisco, the paratransit system would cost local taxpayers and additional $7 million per year, and the quality of the paratransit service would suffer significantly. SFMTA added that the usage of taxicabs has been a tremendous savings to the public, and if taxicabs became unavailable to the paratransit transportation system, then the public would incur a substantially higher cost in order to maintain paratransit services.

With regard to ridesharing NOETS accommodating special needs passengers, SideCar stated its belief that with the expansion of ridesharing into various and diverse communities, expanded community participation will match the needs of the ridesharing community, including the needs of disabled persons requiring, for example, cars outfitted with special equipment. SideCar stated that it has engaged the Center for Accessible Technology to work on the issue, and they are confident that they can further address accessibility issues. The SFMTA/IATR responded that ridesharing NOETS cannot accommodate special needs customers because, for example, it is unrealistic that the driver of a personal vehicle will purchase a wheelchair accessible vehicle in order to engage in ridesharing. These vans are a very specialized and expensive type of equipment, and they break down frequently and use a tremendous amount of gasoline as there are no fuel efficient alternatives. The representative of the SFMTA/IATR opined that the only way to maintain wheelchair accessible service is to require it through regulations. The representative from Luxor cabs concurred with the SFMTA's analysis of this issue.

With regard to livery services, the GCLA stated that all of its drivers are trained under the American Disabilities Act ("ADA") and have undergone training on how to provide service to disabled persons.

In response to Uber's statement that their services are akin to a Hotels.com, Expedia.com, or Kayak.com, the representative from the Center for Accessible Technology pointed out that

these websites are legally obligated to provide disabled persons the ability to book rooms that fit their needs, and the hotels that participate, have an obligation to ensure that such rooms are available. When asked about what obligation Uber has to ensure that there is accessible services from their participating partners, Uber responded that it is a software provider and not the provider of transportation services and thus, is not responsible for compliance by the providers of the transportation service who utilize Uber's software. Uber added, however, that it could do a better job of helping to ensure that companies that do provide transportation services arranged through use of the Uber App comply with applicable requirements for disability access.

Uber stated that it has approached the SF Mayor's office to become part of the paratransit network. The representative from the SFMTA/IATR does not support Uber's inclusion into the paratransit network because that would mean that an entity that is not subject to any regulatory controls is receiving publicly subsidized funds to pay unregulated fares that fluctuate unpredictably based on demand. She posed the hypothetical of what would occur during an earthquake where Uber's surge pricing could raise the price of a ride, as SFMTA stated it did during Hurricane Sandy in New York.

The workshop facilitators asked about the use of Uber after hurricane Sandy, and what steps Uber took to ensure the safety of their drivers, and how "surge pricing" fit in. Uber stated that they offered surge pricing rates to drivers to help maintain an adequate supply of vehicles, but initially did not charge their passengers the surge price rate.

Tickengo stated that disabled passengers are already using its website and apps to request special vehicles (there is a special note section for this type of request), and that all drivers (including those with special disabled-access vehicles) can carpool and sign up on its website without discrimination whatsoever. Tickengo stated that it encourages people with disabilities to use its service and feels that ridesharing between citizens is perfect for citizens with special needs.

Preventing Conflicts with Public Transit Systems

TransForm stated that the Commission should distinguish online-enabled services from Passenger Stage Corporations to ensure a process that can facilitate communication, and prevent conflicts with public transit services. TransForm stated that preventing these conflicts are

important to ensure that the cost recovery and quality of service of public transit operations are not impacted.

Congestion

The UTW asserted that NOETS cause congestion and pollution and increases the chances of accidents. Cities have vital interests in issues affecting the environment, safety and access to transportation by the disabled.

d. PROPOSED MODIFICATIONS

The Distinction Between Taxicabs and Livery Services.

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5360.5. - Prearranged basis operation

(a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.

(b) For purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

CPUC GO § 3.01 - Prearranged Transportation

Class A and Class B charter party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384 (b) shall provide transportation only on a prearranged basis.

CPUC GO § 3.03 - Taxi Transportation Service Not Authorized

A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters.

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Proposed Modifications

SFMTA/IATR proposed that a third means to distinguish between taxi service and limo service is the concept of minimum pricing for TCP services. Minimum pricing ensures the distinction between two separate classes of service: on-demand taxi service and prearranged luxury limousine service.

Pre-Arrangement

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5360.5 – "Prearranged basis"

(a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.

(b) For purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

CPUC GO § 3.01 - Prearranged Transportation

Class A and Class B charter party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384 (b) shall provide transportation only on a prearranged basis.

Proposed Modifications

Several parties including TPAC and the SF Medallion Association stated that the Commission needs to add a time component to the Commission's prearrangement requirement. Several parties recommended a 30-60 minute prearrangement requirement. Tickengo stated that it already has a 30-minute prearrangement requirement before any passenger can obtain a ride from a community driver. In response to questions from representatives from the taxi industry, Tickengo stated that it would consider a prearrangement period of one day.

Uber stated that the Commission has considered and rejected proposals by the taxi industry in prior proceedings for a minimum time requirement for transportation service to constitute "prearranged" service because it would hurt innovation. Uber referred to a Commission study from 1993 to support its statement. TPAC responded that

times have changed, and the Commission's investigation of a time requirement predated smartphone technology. TPAC reiterated that 8 minutes from request to pick-up is not prearrangement. SFMTA/IATR echoed TPAC's response and elaborated that technology has destroyed the distinction between limos and taxicabs and that a new study would result in different findings. Lyft stated that a time requirement would serve no public safety interest.

Ridesharing

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5353 – Exclusions

(h) Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars ($75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

Proposed Modifications

Tickengo proposed that the Commission adopt the American Automobile Association's ("AAA") average cost of car ownership of $8,776 as the maximum amount that a driver can earn per year. Tickengo contended that a dollar amount such as the AAA amount, will ensure that rideshare NOETS do not compete with commercial drivers. Tickengo states that a maximum price per mile (such as the IRS mileage rate) would not be accurate because drivers would have to give rides 100% of the time in order to recuperate the cost of owning their vehicle. Also

citizens would no longer be free to choose how much to contribute to fellow citizens for individual carpools.

With regard to ridesharing NOETS accommodating special needs passengers, SideCar stated its belief that with the expansion of ridesharing into various and diverse communities, expanded community participation will match the needs of the ridesharing community, including the needs of disabled persons requiring, for example, cars outfitted with special equipment.

Lyft stated that a cost cap is inherently arbitrary and unenforceable. A bright-line test like the one advocated by Tickengo is arbitrary because it relies on an opaque calculation determined by AAA for a different purpose and because, by definition, an average figure cannot accurately reflect the actual costs experienced by any particular driver or a vehicle. The vague standard such as the one advocated by Sidecar in the form of AB 171 would be impossible for the Commission to enforce.

TPAC, the SF Cab Driver's Association, and other industry members, proposed that an ideal limit is the IRS mileage rate. TPAC stated that the AAA cost of ownership is inappropriate because drivers would be allowed to receive payments covering ridesharing and non-ridesharing expenses. TPAC explained that the talk of annual limits is really just a shell game. Drivers do not provide rides "by the year." The unit of measure that applies to for-hire transportation is the individual trip. Thus, the issue is whether the driver possessed a profit motive when he provided a specific ride to a particular passenger. The IRS mileage rate is a bright line test that can be applied to every single instance of ridesharing. TPAC also responded to the contention that different cars require a different cost analysis by stating that part of the idea of using an average expense such as the IRS mileage rate is to discourage the use of highly consumptive vehicles. Therefore, TPAC concluded that the IRS mileage rate: (1) is the simplest and most accurate method to calculate the actual cost of engaging in a ridesharing trip; and (2) encourages the use of more fuel efficient vehicles.

TransForm stated that its comments refer to ridesharing trips that are aggregating trips with coincident origins and destinations along the same route. TransForm stated that especially for trips that are not served well by public transit that there is a role for expanded access to ridesharing. TransForm stated that while it is relatively easier to identify a work-related rideshare, that it is difficult to find a non-work rideshare without the use of technology, and that

it is important to review the definition of ridesharing to allow riders to use the services to share rides, gain transportation choices, and improved connectivity to transit.

The San Francisco Cab Drivers Association proposed that a true ridesharing app should require the driver to post their destination first, with a reasonable time window, and for the maximum per mile rate should be the prorated IRS standard business mileage rate, currently 56.5 cents per mile, which along with bridge tolls and other trip expenses, should be shared equally among passengers and driver.

Uncontrolled number of vehicles on the road

The SFMTA/IATR points to the fact that the supply of taxicabs is highly regulated by the city, whereas, the number of TCP holders and NOETS drivers in completely uncontrolled. The SFMTA/IATR would like to see state law give the local jurisdiction some ability to control the volume of for-hire and NOETS vehicles within their jurisdiction.

e. GENERAL CONSIDERATIONS

IP - Service / Information Service Providers:

TURN stated that NOETS are not simply IP Enabled Services. If they were a true IP-Enabled service, they would license the entire platform to companies and make money through licensing fees. TURN stated that the fact that the NOETS are making money from transporting people from point A to point B necessarily means that they are not a information service.

No objection to the technology:

The consensus from most of the taxicab and livery representatives and transportation regulators is that they are not against innovation or the technology that is used by the NOETS. The SF Medallion Holders Association commented that the SFMTA is currently developing a similar app to connect all taxicabs to the same service.

Lack of Information:

TPAC, the SFMTA/IATR, the SF City Attorney's Office, the Center for Accessible Technology, the UTW, the GCLA, and other parties expressed their concern that the lack of a

factual record severally hinders the Commission's ability to make a decision on these issues. The issues of ridesharing, insurance, fare calculations, access, congestion, and many other issues cannot be determined without a more thorough understanding of NOETS and their operations. SFMTA/SFO commented that it is hard to truly test anyone's statements without some sort of evidentiary proceeding or at the very least requiring the parties to submit evidence under oath that supports their position.

SideCar stated that any public harm that purport to justify new regulations must be based in evidence and not in accusations or rhetoric. Sidecar stated that there has been a lot of speculation regarding harm to public safety, but that such speculation has not been backed up by hard data. Sidecar stated that they want this regulatory process to be evidence-based and that the company is confident that data would support the reformation of the existing, anti-competitive market and create a new level playing field. SideCar further stated that since the industry is so new, the Commission may consider instituting a pilot program or to institute regulation on a demonstrative basis in order to aggregate the facts necessary in order to craft appropriate, narrowly-tailored regulations.

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Re-imposition of the Cease and Desist Order on the NOETS

Several parties, including the SF Cab Drivers Association, believe that the Commission should re-impose the cease and desist order on the NOETS. These parties argued that there is a regulatory framework, both at the local and the state level, which bars the NOETS transportation operations. The SF Cab Drivers Association asserted that the continued operation of NOETS allows them to operate free from regulations imposed on taxicabs and livery vehicles, and that this grants NOETS an unfair competitive advantage and is driving law abiding operators out of business.

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