

Decision 14-11-043 November 20, 2014

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 MODIFYING DECISION 13-09-045

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APPENDIX A – Assembly Bill 2293

DECISION MODIFYING DECISION 13-09-045

1. Summary

This decision makes two modifications to Decision (D.) 13-09-045 which created the rules and regulations for Transportation Network Companies (TNC).

- 1) This decision implements certain portions of legislation (Assembly Bill (AB) 2293) dealing with insurance coverage that was part of the discussion of the original proposed decision that was issued for public comment.¹ The portions of legislation that are not dealt with in this decision will be dealt with in an upcoming decision and parties will have an opportunity to provide opening and reply comments; and
- 2) This decision further defines the term "TNC Services." The definition is consistent with the intent of the legislation.

The modifications are summarized below:

- a. TNC services are defined with three periods. Period 1 is: App open - waiting for a match. Period 2 is: Match accepted - but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period 3 is: Passenger in the vehicle and until the passenger safely exits vehicle.
- b. Pursuant to legislation, for Periods 2 and 3 TNCs must provide primary commercial insurance in the amount of one million dollars (\$1,000,000). TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).
- c. Pursuant to legislation, TNCs shall also provide uninsured motorist coverage and underinsured motorist coverage in the

¹ On June 10, 2014 the Commission issued a Proposed Decision and asked for opening and reply comments. This revised decision is as a result of the comments filed as well as legislation that was issued.

amount of one million dollars (\$1,000,000) during Period 3 from the moment a passenger enters the vehicle until the passenger exits the vehicle. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.

- d. Pursuant to legislation, for Period 1 TNCs shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).
- e. Pursuant to legislation, for Period 1 TNCs shall also maintain insurance coverage that provides excess coverage insuring the TNC and the driver in the amount of at least two hundred thousand dollars (\$200,000) per occurrence to cover any liability arising from a participating driver using a vehicle in connection with a TNC's online-enabled application or platform. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). It is the intent of AB 2293's author that, if a TNC driver is logged into more than one TNC app during Period 1, the insurers providing such excess coverage shall share the cost relating to any claims based on the contract terms or, in the absence of contract terms, on a pro rata basis. In addition, in the event of

multiple excess insurance policies, the policies will not be stacked.

- f. Until AB 2293 becomes effective, we require all TNCs to carry a minimum of \$100,000 commercial insurance for Period 1.

The current Commission policy as ordered in D.13-09-045 required TNCs to have \$1 million excess insurance policies. The key differences between current Commission rules and AB 2293 are that AB 2293 requires primary insurance whereas D.13-09-045 allowed excess insurance policies, and that AB 2293 requires TNC insurance when there is no passenger in the vehicle.

AB 2293 affords TNCs until July 1, 2015 to comply with its requirements. However, a gap exists between now and July 1, 2015 with respect to Period 1, i.e., the interval when there is no passenger in the vehicle, and this decision closes that gap by requiring TNCs to carry a minimum of \$100,000 commercial policies for Period 1.

Lastly, pursuant to D.13-09-045 the Commission committed itself to holding an en banc approximately one year after the decision was adopted. The intent of the en banc was to get a better understanding of how our rules have worked and whether revisions are needed. The Commission held an en banc on November 4, 2014.

2. Procedural and Legislative History

2.1. Procedural History - The Assigned Commissioner's Ruling (ACR)

An ACR was issued on March 25, 2014, requesting comment on five proposed modifications to Decision (D.) 13-09-045.² The need to issue that

² ACR at 2-3.

ACR was driven by a number of factors.³ First, the phrase “providing [Transportation Network Companies] TNC services” has been interpreted different ways; second, there was some uncertainty over whether a TNC driver’s personal automobile insurance would apply to an incident where the TNC driver is wholly or partially at fault, the app is open, and there is no passenger in the vehicle; and third, the Commission analyzed whether the TNC should provide coverage beyond commercial liability insurance required by our decision in light of concerns raised by the California Insurance Commissioner and others about potential gaps in TNC insurance required by our decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. The ACR proposed modifications so that coverage is provided on a consistent basis. The ACR also invited the parties to comment on the proposed changes.

The following parties filed opening comments to the ACR: SideCar, Lyft, Inc. (Lyft), United Taxicab Workers, San Francisco Municipal Transportation Agency (SFMTA), City and County of San Francisco (CCSF), San Francisco Cab Association, Luxor, Taxicab Paratransit Association of California (TPAC), Uber Technologies, Inc. (Uber), Personal Insurance Federation of California (PIFC), Greater California Livery Association (GCLA), former San Francisco Mayor Willie L. Brown Jr., and Christopher Dolan and the Dolan Law Firm (collectively referred to as Dolan).⁴ The following parties filed replies to the ACR: SideCar,

³ Rule 16.4 of the Commission’s Rules sets forth the procedure for a party to file a petition for modification, and the Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision.

⁴ Christopher Dolan and the Dolan Law Firm were granted party status, with limitations, by way of an e-mail ruling on April 7, 2014.

Lyft, United Taxicab Workers, SFMTA, San Francisco Cab Association, TPAC, Uber, and the Dolan Law Firm.

2.2. Legislative History – Assembly Bill 2293 (AB 2293)

AB 2293 created Article 7 and it is added to Chapter 8 of Division 2 of the Public Utilities Code. Article 7 commences with Section 5430 and is titled Transportation Network Companies.

The legislation adopts the definition from D.13-09-045 which defined TNCs as an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

AB 2293's main focus is to clarify that personal insurance should not apply to TNC services. Additionally, AB 2293 clarifies insurance requirements for the TNC services allowing for commercial insurance to be available when the driver logs onto the TNC platform and be available until the driver logs off from the TNC platform.

3. Defining the phrase “Providing TNC Services”

3.1. Comments on the ACR

D.13-09-045 did not specifically define TNC services other than to say 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.⁵ The ACR proposed to define this term and asked parties for comment. Thirteen parties filed comments in response to the ACR.

⁵ D.13-09-045 at 30.

California Airports Council believes the definition must include the time a TNC driver is waiting for notification of new patrons and the time between trips.

CCSF supports closing the insurance gap but questions if the proposed modification is sufficient. The City proposes that “providing TNC services” should include those periods in which a driver is

(1) en route to pick up a TNC passenger; (2) transporting a TNC passenger; (3) picking up a TNC passenger; (4) dropping off a TNC passenger; or (5) situated in the TNC vehicle while the app is open or the driver is otherwise available to accept rides from a subscribing TNC passenger.

Dolan Law Firm supports defining this phrase but suggests changing “whenever the TNC driver is using their vehicle” to “whenever the TNC driver is using a vehicle.” Additionally, the phrase “as a public or livery conveyance” should be changed to read “for the purpose of facilitating the actual or prospective transportation of the public, including but not limited to the time that they initially log onto, open, or otherwise indicate their availability as open and available to accept passengers through, a TNC app, until the driver has logged off, closed the application or otherwise indicated they are no longer available to provide TNC services.” Dolan Law Firm asserts this coverage would be similar to what is afforded by other transportation providers such as taxis.

Luxor argues that a vehicle becomes a commercial vehicle as soon as the driver registers his or her vehicle with a TNC. Otherwise, Luxor fears that there is an open invitation for insurance fraud.

Lyft does not believe the Commission should create a new definition of “providing TNC services” as the current definition is clear and unambiguous. Additionally, adding the phrase “whenever the TNC driver is using their vehicle as a public or livery conveyance” will create ambiguity with the balance of the

Phase I decision. The app on/app off concept will also throw the entire regulatory framework into chaos as the decision contemplated a nexus between the provision of transportation for compensation and the concept of providing TNC services. There is no universally accepted meaning of the terms “open,” “closed,” or “available to accept rides.”

PIFC suggests defining the phrase to mean “when participating drivers make themselves available for passengers, which includes, but is not limited to, logging on to the TNC’s application program, attaching an insignia or logo indicating the personal motor vehicle as providing transportation network services, or having a fare-paying passenger getting into or out of the vehicle.” PIFC believes this definition will accomplish the Commissioner’s goal of removing gaps in the commercial liability coverage.

San Francisco Cab Drivers Association (SFCDA) opposes the proposed definition and instead believes either the TNC or the TNC driver needs to provide each vehicle with 100% insurance coverage, 100% of the time.

SideCar believes the proposed definition is overbroad and would subject TNCs to fraud by unscrupulous drivers and lead to higher than necessary insurance costs.

Summon proposes limiting “providing TNC services” to only those times when TNC drivers are en route to a passenger or are transporting a passenger.

TPAC suggest that rather than basing insurance upon a limited time frame when TNC driver has a specific app open, the appropriate Commercial Auto Liability Insurance policy would cover the vehicles being used to provide transportation services at all times. The Commercial Auto Liability Insurance policy should be commensurate with at least the minimum charter-party carrier requirements for TNCs that provide exclusively pre-arranged services.

Uber suggests that the Commission should maintain the original language of D.13-09-045 with regard to the period during which commercial TNC third-party liability insurance shall apply. While Uber supports establishing coverage requirements for Period 1 (*i.e.*, the driver's app is open, but the TNC driver has not yet accepted a request for transportation), Uber argues that the Commission should allow the TNCs and the insurance industry to fashion market-based solutions to address the coverage needs during that period. Uber is also concerned about a TNC driver in Period 1 having contracted with multiple TNCs and keeping all apps open at all times in order to maximize the likelihood of procuring a request for transportation. Uber suggests defining "providing TNCs services" as follows: "Whenever the TNC driver is using their vehicle as a public or livery conveyance, which is from the time the TNC driver accepts a passenger's request to prearrange transportation services until the time the TNC driver concludes providing such transportation services to the passenger." As for levels of insurance during Period 1, Uber suggests the Commission should mandate coverage "at least at the limits required by state personal auto policies, but leave open the question of who may purchase such coverage."

United Taxicab Workers do not believe the proposed modifications will close the TNC coverage gaps.

3.2. Discussion

As this is a new industry, the Commission knew that the rules and regulations it enacted might need to be modified as real-time information about TNC operations became known. The Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.

D.13-09-045 uses the phrase “providing TNC services” in a manner that may have caused some confusion. For example, in TPAC’s Application for Rehearing of D.13-09-045, TPAC argues that the “Decision fails to state whether a TNC driver is considered to be providing TNC services when en route to picking up a passenger, when returning from dropping off a passenger, or when a driver is cruising an area while awaiting a ride request.”⁶ The California Department of Insurance has also recognized this potential uncertainty⁷ and has advocated defining “providing TNC services” to cover the following three periods: Period 1 (App Open – No Match); Period 2 (Match Accepted – Passenger Pick-Up); and Period 3 (Passenger in the Car – Passenger has safely exited the vehicle).⁸

As such, in an effort to eliminate uncertainty, the Commission defines “providing TNC services” as follows:

TNC services are defined with three periods. Period One is: App open - waiting for a match. Period Two is: Match accepted - but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger). Period Three is: Passenger in the vehicle and until the passenger safely exists vehicle.⁹

⁶ Application at 23, and fn. 129.

⁷ See Department of Insurance letters dated January 10, 2014, March 25, 2014, and Background White Paper updated April 1, 2014.

⁸ Department of Insurance letter dated April 7, 2014.

⁹ We have heard from at least one airport that it requires that the app stay on until the TNC driver has left airport property. As we stated in D.13-09-045, the TNCs must follow any and all airport regulations, therefore TNC drivers must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off

With this definition, we clarify that providing TNC services is not limited to the time between obtaining a match to transport a TNC passenger or the TNC operator's travel to pick up that TNC passenger, transport, or drop-off of that TNC passenger(s) to his/her/their destination. Instead, this definition is expansive enough to cover all circumstances when the TNC driver is driving and/or waiting to be hired by a TNC passenger, has accepted a TNC passenger and is en route to pick up the TNC passenger, is transporting the TNC passenger from the pick-up spot to the destination stop, and is then again driving and/or the app is open to indicate that the driver is available or waiting to be hired by another TNC passenger. It is our intent that insurance coverage must be consistent with our definition of "providing TNC services" and during those times that those services are being provided.

3.3. Comments on Insurance Coverage in Response to the ACR

As stated above this is a new industry and D.13-09-045 left the proceeding open in the event new data became available that could assist the Commission in refining our policies to further assure public safety, consumer choice, and innovation for the betterment to all Californians. Since the issuance of D.13-09-045 this industry has grown and the Commission has been able to receive additional data regarding the operation of TNCs and how TNCs are applying this Commission's directives. For example, the California Insurance Commissioner raised the specter of potential gaps in TNC insurance required by the Commission's decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical

no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open.

expenses. As a result of these uncertainties, there are a number of different situations where either no coverage or differing coverage may be available. The Commission's top priority in this case and all cases is to protect the public while allowing for customer choice and encouraging innovation. Thirteen parties filed comments in response to the ACR.

California Airports Council supports additional insurance requirements at a level similar to other transportation services. The language should also require that airports be listed as additional insured's to protect airport liability when TNCs are operating on airport property. CCSF argues that the new definition of the phrase "providing TNC services" should remain a part of the decision's insurance requirement. CCSF believes that the phrase "used as a public livery or conveyance" would add further confusion to the question of when TNC insurance applies to incidents involving TNC vehicles and drivers. CCSF supports additional coverage with the caveat that the comprehensive and collision insurance be \$50,000 per person and \$100,000 per accident as recommended by the California Department of Insurance. Additionally, CCSF requests that TNC insurance be deemed primary, that the TNC insurance policies be made available to the public, and ensure that personal insurance providers are advised of TNC activities of their insureds.

Dolan Law Firm argues that instead of the phrase "used as a public or livery conveyance," it should state "TNC vehicles providing TNC services" in order to provide consistency throughout the decision. Dolan also supports the additional coverage and limits.

Former Mayor Willie L. Brown Jr. also supports additional insurance coverage requirements such as Uninsured Motorists Coverage, Comprehensive

Coverage, Collision Coverage, and medical payments coverage as a safety measure.

GCLA believes additional insurance coverage requirements are fair and responsible. But GCLA suggests that the commercial coverage be primary, transparent to the public, and in force and effect 24 hours per day, 7 days per week. Finally only "A" rated and admitted carriers be allowed to insure TNCs.

Luxor argues for TNCs maintaining full-time primary commercial insurance on all vehicles registered with them for purposes of providing TNC services.

Lyft argues that the Commission need not revise the insurance requirements as there is no documented coverage gap. It cites the settled rule that exclusions in insurance contracts will be narrowly against the insurer. (*White v. Western Title Insurance Company* (1985) 40 Cal. Ed 870, 881.) Lyft concludes that insurers would be unlikely to prevail if they were to invoke this exclusion to deny a TNC driver's coverage under a personal automobile policy during periods when the driver "is in match mode."

PIFC suggests that the TNC commercial liability be primary and clarify that the duty to defend rests with the TNC's primary commercial liability policy. SFCDA maintains that TNC drivers and vehicles should be required to obtain full-time commercial livery insurance policies. The coverage limits should be no less than what is required of taxicabs in a given jurisdiction.

SideCar disagrees that the proposed coverage limits are appropriate and, instead, recommends that the \$1,000,000 liability coverage only apply for the period where a ride has been accepted in the app until the ride ends and the passenger exits the vehicle. Contingent third party liability should be \$50,000 per individual bodily injury claim and \$1,000,000 per incident, and property

damage up to \$25,000. Contingent collision coverage should be required in the amount of \$50,000.

Summon opposes any new insurance requirements until the insurance market offers financially viable products to meet those requirements.

United Taxicab Workers asserts having separate personal and TNC insurance policies provides an incentive for driver fraud that may be difficult to detect. Instead, TNC drivers must carry commercial livery insurance.

3.4. Discussion

With respect to TNCs, this Commission stepped in to establish basic consumer protection policies in order to promote the safety of passengers, drivers, and the general public. Our role has not been to favor one form of transportation over another. More specifically, we have not chosen to select specific insurance contract language favored by one side or another. Instead, we remain steadfast in promoting safety and consumer choice.

Although parties have provided comments in response to the ACR, legislation has created clear guidance for this Commission and we are bound by legislation. Consequently, the Commission will implement the intent of the legislation. AB 2293 requires the following and the Commission will adopt the language of AB 2293 as stated below and as attached as Appendix A to this decision:

- a. For Periods 2 and 3, TNCs must provide primary commercial insurance in the amount of one million dollars (\$1,000,000). TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).

- b. TNCs shall also provide uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) during Period 3 from the moment a passenger enters the vehicle until the passenger exits the vehicle. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.
- c. For Period 1, TNCs shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).
- d. For Period 1, TNCs shall also maintain insurance coverage that provides excess coverage insuring the transportation network company and the driver in the amount of at least two hundred thousand dollars (\$200,000) per occurrence to cover any liability arising from a participating driver using a vehicle in connection with a transportation network company's online-enabled application or platform. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). It is the intent of AB 2293's author that, if a TNC driver is logged into more than one TNC app during Period 1, the insurers providing such excess coverage shall share the cost relating to any claims based on the contract terms or, in the absence of contract terms, on a pro rata

basis. In addition, in the event of multiple excess insurance policies, the policies will not be stacked.

AB 2293 provides that the insurance requirements are effective as of July 1, 2015. In concert with legislation, the Commission orders TNCs to comply with AB 2293's new insurance requirements beginning July 1, 2015 in order to maintain an active TNC permit.

Since AB 2293 is effective as of July 1, 2015, there is a gap between now and July 2015 with respect to insurance coverage during Period 1. The intent of AB 2293 has always been to ensure that TNCs have adequate insurance available in the event of a car accident involving a TNC driver, and that personal insurance is not the insurance covering the incident. The Assigned Commissioner's Ruling was issued prior to the adoption of legislation and its purpose was to close the insurance gap that existed as a result of not adequately defining the term TNC Services in D.13-09-045. As detailed above, parties filed comments to the ACR, and as a result the proceeding has the record available to close the insurance gap. AB 2293 gives the Commission the authority to exercise its authority in a manner consistent with the intent of AB 2293.

AB 2293 states:

5441. The Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities related to transportation network companies.

Accordingly, this decision utilizing the comments from the ACR will close the gap with respect to insurance coverage during Period 1.

The Commission has reviewed the comments to the ACR. While we carefully evaluated and considered the comments presented by the varying

constituencies, it is our responsibility to focus on our role to promote safety of passengers, drivers, and the general public while promoting consumer choice. Therefore, until AB 2293 becomes effective, we require all TNCs to carry a minimum of \$100,000 commercial insurance for Period 1.

3.4.1. Applying the Modified Insurance Requirements to Uber

3.4.1.1. Comments Regarding Applying Modifications to Uber

The California Airports Council supports applying the proposed modifications to Uber.

Dolan supports applying the insurance modifications to Uber but also wants them to apply to Rasier-CA LLC. Finding of Fact ¶ 26 should also be changed with the phrase “while they are providing Uber services” added at the end following the phrase “incidents involving vehicles and drivers.” This same change should be made at Finding of Fact ¶ 13. Finally, Dolan suggests that the commercial liability coverage be a primary “nonwasting policy” so that defense fees and costs do not eat away at the policy limits.

SFCDA agrees that these modified insurance requirements should apply to Uber.

Uber disagrees, reasoning that as the TNC insurance requirements already apply to Uber’s TNC subsidiary, Rasier-CA LLC, there is no need to apply them to Rasier’s parent entity, Uber. Uber also believes the question is premature as the Commission deferred issues regarding whether Uber should be regulated as a Transportation Charter Party (TCP) to Phase 2.

United Taxicab Workers argues that Uber should be required to carry commercial livery insurance on all its vehicles.

3.4.1.2. Discussion

We are persuaded by Uber's comments. The fact of the matter is that Uber has multiple transportation offerings, however, only UberX (Rasier) provides TNC services. The other transportation offerings are licensed as limo drivers and regulated by this Commission. For instance, offerings such as Uber or Uber Black or Uber SUV are all and should be licensed professional drivers and required to carry commercial insurance of at least \$750,000. Therefore, this decision will require Uber Technologies' subsidiary Raiser (UberX) to comply with the modified requirements. We will consider whether Uber Technologies should be a TCP itself in Phase II of this proceeding.

4. All *Ex Parte* Communications need not be Reported in this Quasi-Legislative Proceeding.

The above-mentioned ACR also asked for comments on a proposal to treat all communication regarding this proceeding with Commission decision makers subject to the reporting requirements of our *Ex Parte* communication rules (Rule 8.4).

4.1. Comments on *Ex Parte* Communications

California Airports Council supports making Rule 8.4 applicable to this proceeding. CCSF supports reporting of *ex parte* communications in this proceeding. Lyft sees no reason for the Commission to depart from its *ex parte* rules. SFCDA supports requiring the reporting of *ex parte* communications. SideCar opposes the reporting requirements as they will stifle and hinder the free and abundant communication between Commission staff and the TNC industry. Summon supports having the reporting requirements cover meeting minutes of the Insurance Working Group. TPAC supports making the *ex parte*

reporting rules applicable to this proceeding. United Taxicab Workers argues that all *ex parte* communications should be reported.

4.2. Discussion

Normally in any quasi-legislative proceeding, “*ex parte* communications are allowed without restriction or reporting requirement.” (Rule 8.3(a) of the Commission’s Rules of Practice and Procedure.) But the Commission does have the authority “in special cases and for good cause shown,” to “permit deviations from the rules.” (Rule 1.2 of the Commission’s Rules.)

In this instance, we believe there is not good cause to deviate from Rule 8.3(a). In any quasi-legislative proceeding such as this, *ex parte* communications are allowed without restriction or reporting requirement, because they are non-adjudicatory proceedings whereby the Commission can accept public comment and meet with a wide variety of parties and other stakeholders in order to determine the best course for policy creation.

5. Comments on Modified Decision

The proposed modified decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. The following parties filed comments on June 30, 2014: The Association of California Insurance Companies (ACIC), Lyft, PIFC, San Francisco Cab Drivers Association, San Francisco International Airport and SFMTA, SideCar, TPAC, Uber, and United Taxicab Workers.

ACIC has proposed clarifications to the definition of providing TNC services, and when the duty of excess coverage is triggered. ACIC also asks the Commission to specify the duty of indemnification.¹⁰

Lyft believes that the decision is adopting an expansive and unworkable definition of providing TNC services. Lyft also objects to the decision on the grounds it imposes “arbitrary and unreasonable levels of insurance on TNCs which would far exceed those imposed on other passenger carriers, including TCPs and taxis[.]”¹¹

PIFC supports the decision in a number of ways but suggests clarifying language regarding the definition of providing TNC services, the maintenance of commercial liability insurance, and the TNC’s insurer’s duty to defend.¹²

SFCDA opposes the decision on the grounds that the proposed insurance requirements are insufficient because they provide less than full-time commercial livery insurance.¹³

San Francisco International Airport and SFMTA supports the Commission’s efforts to close the gaps in current TNC insurance coverage requirements but ask that the definition of providing TNC services be expanded to include all times those TNC vehicles are on airport property, regardless of whether an app is on or off, or whether the TNC driver has a passenger.¹⁴

SideCar argues that the proposed insurance requirements are unjustified and unreasonable as they are not tailored to TNC activities, and would impose

¹⁰ ACIC Comments at 3-5.

¹¹ Lyft Comments at 1.

¹² PIFC Comments at 1-3.

¹³ SFCDA Comments at 1-4.

¹⁴ San Francisco International Airport and SFMTA’s Comments at 1.

requirements beyond what is required by municipalities and this Commission for other transportation services.¹⁵

TPAC's comments go well beyond the scope of what was covered by the ACR and this decision, and instead appears to be rearguing points it has raised in the Court of Appeal and the California Supreme Court.¹⁶ These comments are beyond the scope of the decision and shall not be considered. We do, however, consider TPAC's argument that TNCs should be required to maintain primary commercial insurance commensurate with Charter-party carriers and taxis.¹⁷ Finally, TPAC suggests that the *ex parte* reporting rules adopted by this decision should be applied retroactively.¹⁸

Uber, as we have noted above, argues that the originally proposed insurance requirements go beyond what is currently required for Charter-party carriers, taxis, limos, and other for hire modes of transportation.¹⁹ Uber also objects to the inclusion of Period 1 in the definition of providing TNC services.²⁰ Instead, Uber argues that coverage for Period 1 can be satisfied with the imposition of lesser insurance amounts.²¹ Finally, Uber asks that the Commission not extend the *ex parte* rules to quasi-legislative proceedings such as this proceeding.²²

¹⁵ SideCar's Comments at 3-8.

¹⁶ TPAC's Comments at 3-10.

¹⁷ *Id.* at 12-13.

¹⁸ *Id.* at 13-14.

¹⁹ Uber's Comments at 4-9.

²⁰ *Id.* at 9-10.

²¹ *Id.* at 12-14.

²² *Id.* at 16.

United Taxicab Workers oppose the decision on the ground it does not provide the widest scope of coverage because it does not address the period when a driver has his/her app turned off but is nonetheless working.²³ They also argue that TNCs should carry full-time commercial livery insurance.²⁴

Where appropriate, the Commission has made edits to this decision based on some of the comments. Where comments have not been incorporated, they shall be deemed rejected.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Mason III is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.13-09-045 did not adequately define the phrase “providing TNC services.”
2. Parties have differing interpretations of the phrase “providing TNC services.”
3. The California Department of Insurance has advocated a definition of “providing TNC services” that is different than how some insurance companies have defined “providing TNC services.”
4. AB 2293 created Article 7 and it is added to Chapter 8 of Division 2 of the Public Utilities Code. Article 7 commences with Section 5430 and is titled Transportation Network Companies.
5. The current Commission policy as ordered in D.13-09-045 required TNCs to have \$1 million excess insurance policies. The key differences between current Commission rules and AB 2293 are that AB 2293 requires primary insurance

²³ United Taxicab Workers Comments at 2-3.

²⁴ *Id.* at 4-5.

whereas D.13-09-045 allowed excess insurance policies, and that AB 2293 requires TNC insurance when there is no passenger in the vehicle.

6. AB 2293 affords TNCs until July 1, 2015 to comply with its requirements.

7. A gap exists between now and July 1, 2015 and this decision closes that gap by requiring TNCs to carry a minimum of \$100,000 commercial policies for Period 1.

8. The legislation adopts the definition from D.13-09-045 which defined TNCs as an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

9. Uber Technologies has multiple transportation offerings, however, only UberX provides TNC services.

10. The other transportation offerings by Uber Technologies are licensed as limo drivers and regulated by this Commission.

11. All Uber offerings other than UberX such as Uber or Uber Black or Uber SUV are all and should be licensed professional drivers and required to carry commercial insurance of at least \$750,000.

12. Pursuant to D.13-09-045 the Commission committed itself to holding an en banc approximately one year after the decision was adopted. The intent of the en banc was to get a better understanding of how our rules have worked and whether revisions are needed. The Commission hold an en banc on November 4, 2014 at the Commission auditorium.

Conclusions of Law

1. TNC services are defined with three periods. Period 1 is: App open – waiting for a match. Period 2 is: Match accepted – but passenger not yet picked up (i.e., driver is on his/her way to pick up the passenger). Period 3 is: Passenger in the vehicle and until the passenger safely exits vehicle.

2. For Periods 2 and 3, TNCs must provide primary commercial insurance in the amount of one million dollars (\$1,000,000). TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).

3. TNCs shall also provide uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) during Period 3 from the moment a passenger enters the vehicle until the passenger exits the vehicle. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.

4. For Period 1, TNCs shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver

does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).

5. For Period 1, TNCs shall also maintain insurance coverage that provides excess coverage insuring the TNC and the driver in the amount of at least two hundred thousand dollars (\$200,000) per occurrence to cover any liability arising from a participating driver using a vehicle in connection with a TNC's online-enabled application or platform. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). It is the intent of AB 2293's drafter that, if a TNC driver is logged into more than one TNC app during Period 1, the insurers providing such excess coverage shall share the cost relating to any claims based on the contract terms or, in the absence of contract terms, on a pro rata basis. In addition, in the event of multiple excess insurance policies, the policies will not be stacked.

6. AB 2293 states the Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities related to TNC.

O R D E R

IT IS ORDERED that:

1. Transportation Network Companies services are defined with three periods. Period 1 is: App open – waiting for a match. Period 2 is: Match accepted – but passenger not yet picked up (i.e. driver is on his/her way to pick

up the passenger). Period 3 is: Passenger in the vehicle and until the passenger safely exits vehicle.²⁵

2. For Periods 2 and 3, Transportation Network Companies (TNC) must provide primary commercial insurance in the amount of one million dollars (\$1,000,000). TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).

3. Transportation Network Companies (TNC) shall also provide uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) during Period 3 from the moment a passenger enters the vehicle until the passenger exits the vehicle. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.

4. For Period 1, Transportation Network Companies (TNC) shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000)

²⁵ We have heard from at least one airport that it requires that the app stay on until the TNC driver has left airport property. As we stated in Decision 13-09-045, the TNCs must follow any and all airport regulations. The TNCs must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open.

for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).

5. For Period 1, Transportation Network Companies (TNC) shall also maintain insurance coverage that provides excess coverage insuring the transportation network company and the driver in the amount of at least two hundred thousand dollars (\$200,000) per occurrence to cover any liability arising from a participating driver using a vehicle in connection with a transportation network company's online-enabled application or platform. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). It is the intent of Assembly Bill 2293's author that, if a TNC driver is logged into more than one TNC app during Period 1, the insurers providing such excess coverage shall share the cost relating to any claims based on the contract terms or, in the absence of contract terms, on a pro rata basis. In addition, in the event of multiple excess insurance policies, the policies will not be stacked.

6. Until Assembly Bill 2293 becomes effective we require all Transportation Network Companies to carry a minimum of \$100,000 commercial insurance for Period 1.

7. The modified insurance requirements apply to Uber Technologies's subsidiary Rasier (UberX). We will consider whether Uber Technologies itself should be a Transportation Charter Party in Phase II of this proceeding.

8. Only UberX from the various Uber Technologies offerings is permitted to provide Transportation Network Company services.

9. All other Uber Technologies offerings except for UberX should be either licensed Transportation Charter Party drivers with an active permit from this Commission or licensed taxi drivers with an active permit from the relevant taxi licensing authority.

10. All *ex parte* communications that occur in this proceeding need not be reported.

11. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated November 20, 2014, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

MICHAEL PICKER

Commissioners

APPENDIX A

Assembly Bill 2293

- a. For Periods 2 and 3, TNCs must provide primary commercial insurance in the amount of one million dollars (\$1,000,000). TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).
- b. TNCs shall also provide uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) during Period 3 from the moment a passenger enters the vehicle until the passenger exits the vehicle. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.
- c. For Period 1, TNCs shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).
- d. For Period 1, TNCs shall also maintain insurance coverage that provides excess coverage insuring the transportation network company and the driver in the amount of at least two hundred thousand dollars (\$200,000) per occurrence to

cover any liability arising from a participating driver using a vehicle in connection with a transportation network company's online-enabled application or platform. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). It is the intent of AB 2293's drafter that, if a TNC driver is logged into more than one TNC app during Period 1, the insurers providing such excess coverage shall share the cost relating to any claims based on the contract terms or, in the absence of contract terms, on a pro rata basis. In addition, in the event of multiple excess insurance policies, the policies will not be stacked.

(End of Appendix A)