Decision **PROPOSED DECISION OF COMMISSIONER RANDOLPH**
(Mailed January 25, 2016)

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)

PROPOSED DECISION ON PHASE II ISSUES AND RESERVING ADDITIONAL ISSUES FOR RESOLUTION IN PHASE III

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PROPOSED DECISION ON PHASE II ISSUES AND RESERVING ADDITIONAL ISSUES FOR RESOLUTION IN PHASE III

Summary

In this decision, we address a number of issues that have arisen since the Commission issued Decision (D.) 13-09-045 regulating Transportation Network Companies (TNC), and clarify and expand on some of the issues addressed in D.13-09-045. This decision also addresses whether, and to what extent, any of the rules the Commission adopted for TNCs should also apply to Charter-Party Carriers (TCP).

In general, the rule modifications here are intended to promote public safety and consumer protection through elements such as driver training, vehicle inspections, and recognizable trade dress, while also sustaining the innovation that TNCs have brought to transportation services in California, such as fare-splitting.

We first summarize the rulings we make in this decision:

First, all TCP vehicles, including TNCs, shall be inspected every 12 months or 50,000 miles, whichever occurs first.

Second, pursuant to Pub. Util. Code § 5389, TCPs, including TNCs, shall maintain records demonstrating that all TCP vehicles and TNC vehicles/drivers' vehicles were inspected by a facility, licensed by the California Bureau of Automotive Repair, at the appropriate 12-month or 50,000-mile mark, and shall make such records available for inspection by the Commission.

Third, pursuant to Pub. Util. Code § 5389, TCPs, including TNCs, shall maintain records demonstrating that the 19-point checklist required by D.13-09-045 was followed and the TNC and TCP vehicles passed inspection. TCPs, including TNCs, shall make such records available for inspection by or production to, the Commission.

Fourth, pursuant to Pub. Util. Code § 5389, the Commission's Safety and Enforcement Division may inspect TNC records, including, but not limited to, proof of required liability insurance, criminal background check information, TNC drivers'

licenses and driving records, vehicle inspection records, driver suspensions, deactivations, and subsequent reactivations. TNCs shall provide notice to their drivers that the driver's consent is not needed for the disclosure of their information to the Commission.

Fifth, TNCs that primarily transport unaccompanied minors must, at a minimum, comply with the background check requirements articulated by this Commission in Decision (D.) 97-07-063. ~~In Phase III of this proceeding, we will determine if alternative or additional background check programs should apply to carriers that primarily transport unaccompanied minors.~~Sixth, TNCs shall be required to comply with the insurance filing requirements of General Order (GO) 115-F and Resolution TL-19105.

Seventh, trade dress shall be placed in both the front and rear of a TNC vehicle/drivers' vehicle and shall be identifiable from both the front and rear of a TNC vehicle/drivers' vehicle.

Eighth, ~~leases~~the definition of a personal vehicle shall mean ownership of the vehicle or lease of the vehicle. Leases are permissible pursuant to Pub. Util. Code § 5362, and Vehicle Code §§ ~~460 and 370,~~371, 372, and any other relevant laws. The lease agreement must be for a term of greater than four months as required by Vehicle Code §§ 371 and 372. Lease or rental agreements with a term of less than four months are not permitted as a form of personal vehicle ownership for TNC drivers.

Ninth, the Commission ~~declines to require fingerprints for all TNC drivers at this time, unless the TNC driver is transporting unaccompanied minors, in which case the Trustline process must be followed.~~will issue a separate ruling posing questions about background checks and establishing the identity of drivers through methods such as fingerprinting for party comment.

Tenth, every TNC shall certify, under penalty of perjury, the nature of their operations, and shall also certify how the fares are calculated. This certification shall be submitted to the Commission's Safety and Enforcement Division within 30 days after this decision is issued.

Eleventh, fare-splitting operations by TCPs and TNCs are permitted, subject to certain conditions. One year from the date of this decision's issuance, each TNC engaged in a fare-splitting operation shall produce their waybills (either hard copies or in an electronic format as determined by SED) that document that the fares for the fare-splitting operations were calculated and charged on either a vehicle mileage or a time of use basis, or a combination thereof~~.~~, as required by Pub. Util. Code § 5401.

Twelfth, at any time after the issuance of this decision, SED may also request — and the TNCs shall comply with the request — that Rasier-CA, Lyft, and any other TNC with a fare-splitting operation,[1] perform a demonstration ~~on~~of how the fares are calculated.

Thirteenth, each TNC that has a fare-splitting operation shall provide, as part of its annual report, ~~evidence of~~a report on any incidents arising from their fare-splitting operations.

Fourteenth, each TNC that has a fare-splitting operation shall provide, as part of its annual report, ~~evidence of~~a report on how their fare-splitting operations have impacted the environment.

Fifteenth, the question of Uber Technologies, Inc.'s status as a Charter-Party Carrier shall be addressed in Phase III of this proceeding.

The decision orders a Phase III in this proceeding to consider the above issues and any additional issues deemed relevant to the regulation of TNCs.

Rulemaking 12-12-011 remains open.

[1] Sidecar joined this proceeding with party status on January 28, 2013. It became a licensed TNC on April 21, 2014. On December 29, 2015, Sidecar announced that it would cease operations: http://www.reuters.com/article/us-sidecar-shutdown-idUSKBN0UC1OJ20151229. We refer to Sidecar's comments in this proceeding where relevant to the discussion.

1. Background

1.1. Rulemaking 12-12-011, Decision 13-09-045, Decision 14-04-022 and Decision 14-11-043

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

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

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

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

On April 10, 2014, the Commission issued D.14-04-022, which granted limited rehearing of D.13-09-045 on the following issues: (1) the application of Pub. Util. Code §5391 (adequate insurance); (2) the application of Pub. Util. Code §5374 (mandatory drug testing); (3) the application of Pub. Util. Code §5385.6 (license plate requirement); and (4) whether UberX, or some other component or subsidiary of Uber, is a TNC.

On November 25, 2014, the Commission issued D. 14-11-043, which modified D.13-09-045. Specifically, the decision implemented certain portions of Assembly Bill (AB) 2293 dealing with insurance coverage for the three periods of TNC service.

1.2. Phase II Scope of Issues

Since November 2014, the Phase II scope of issues has evolved in response to changes in the TNC industry, and has been articulated through a series of scoping rulings, as described below.

The Commission initially decided to consider whether TCP regulations, rules, and general orders should be modified so that the Commission achieves, where appropriate, consistency between the operational requirements for TNCs and TCPs.

On November 26, 2014, the then-assigned Commissioner and assigned Administrative Law Judge (ALJ) issued a Scoping Memo and Ruling (Ruling) for Phase II. Specifically, the Ruling directed the Commission's Safety and Enforcement Division (SED) to file and serve a report regarding its recommendations for revising any existing TCP regulations, rules, and General Orders, consistent with Section 2.1 of the Ruling. Section 2.2 of the Ruling included, *inter alia*, the following issues:

- Does Pub. Util. Code § 5401 apply to TNC ride-sharing operations?
- Should Uber Technologies, Inc. (Uber), or any of its related entities, be considered a TCP?

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

This Amended Ruling was issued on April 28, 2015 and revised the scope of Phase II of this proceeding. The Ruling identified the issues below as being in the scope for Phase II of this proceeding and requested comments from parties and stakeholders on them:

1.2.1. Public Safety and Consumer Protection

A. Should the Commission require all TCPs, including TNCs, to inspect vehicles on a biennial, mileage or other

basis, and to maintain and make available a record of each inspection?

B. Who should be allowed to conduct the vehicle inspections?

C. Should the Commission apply the 19-point vehicle inspection checklist in D.13-09-045 to all TCP vehicles except those TCP vehicles already subject to a statutory inspection program?

D. What driver-specific and/or vehicle-specific information, if any, should the Commission require TNCs to provide, and how does collection of such data by the Commission enhance consumer protection and public safety beyond the TNCs' own quality control, such as driver rating systems?

E. Should the Commission require TNCs to obtain and/or provide information on driver suspensions/deactivations and subsequent reactivations? What frequency and what level of detail are reasonable?

F. How should driver training programs be designed to adequately protect consumers and enhance public safety?

G. Should the Commission require that all TNCs transporting unaccompanied minors comply with the requirements set forth in D. 97-07-063?

H. In light of California's new statutory insurance requirements for TNCs, should TNCs be required to file certificates of insurance electronically that may only be canceled with a 30-day notice from the insurance company, as currently required of TCPs, as set out in GO-115 and Resolution TL-19105?

I. Should the Commission reconsider the $20,000 maximum fine for informal staff citations for violations by all TCPs, including TNCs?[2]

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

1.2.2. Fostering Innovation

A. Should any improvements be considered to the TCP and TNC application processes?

B. Are the Commission's present trade dress rules adequate to ensure public safety and consumer protection, and to encourage innovation?

1.2.3. Status of Uber Technologies, Inc.

On June 3, 2015, the Assigned Commissioner issued a ruling requesting data regarding the operation and arrangements of Uber's services, such as UberBlack, that connect passengers with licensed TCPs. The determination of Uber's status will be taken up as part of Phase III of this proceeding.

1.2.4. Pub. Util. Code § 5401

On August 6, 2015, the Assigned Commissioner issued her Ruling instructing interested persons (as defined by Rule 8.1(d) of the Commission's Rules of Practice and Procedure) to submit written comments regarding the impact of Pub. Util. Code § 5401 on the fare-splitting[3] services offered by some of the TNCs. All TCPs not already represented by the Greater California Livery Association were also invited to submit written comments regarding the impact of Pub. Util. Code § 5401.[4] Specifically, the Commissioner asked for comments on the following questions:

- What was the purpose/intent behind the passage of Pub. Util. Code § 5401?
- What public policy objectives are served by Pub. Util. Code § 5401?
- What public safety objectives are served by Pub. Util. Code § 5401?

[3] The Ruling used the term "ride-sharing" to denote this activity; we find that fare-splitting is a more accurate representation of the service and use it here.

[4] This Ruling was a follow-up to the November 26, 2014 Assigned Commissioner and Assigned Administrative Law Judge's Ruling in which the issue of whether Pub. Util. Code § 5401 applies to TNC ride sharing operations was identified as an issue within the scope of Phase II of this proceeding. (Ruling at 3.)

- Does/Should Pub. Util. Code § 5401 apply to the TNCs' ridesharing operations known as "uberPOOL," "Lyft Line," "Shared Rides," or any other ride-sharing operation offered by a TNC?"
- What is the definition of an "individual fare" and should the Commission further define that term?
- Would any public policy objectives be compromised if the Commission were to determine that the TNCs' ride-sharing operations were not subject to Pub. Util. Code § 5401?
- Would any public safety objectives be compromised if the Commission were to determine that the TNCs' ride-sharing operations were not subject to Pub. Util. Code § 5401?
- If the Commission were to determine that the TNCs' ride-sharing operations were not subject to Pub. Util. Code § 5401, should the Commission adopt any additional regulations that would be applicable to the TNCs' ride-sharing operations?

1.2.5. Background Check Requirements for TNCs that Primarily Transport Unaccompanied Minors

On October 26, 2015, the Assigned Commissioner and ALJ issued a Ruling requesting comment on the appropriate background check requirements for TNC drivers that transport unaccompanied minors.[5] Specifically, the October 26, 2015 ruling attached a background paper detailing the Trustline registry process and requested comments on the following questions:

1. Should the Commission require that any TNC intending to retain drivers to transport unaccompanied minors ensure that each driver successfully complete the Trustline Registry application and the Live Scan request forms in order to become a driver for that TNC?
2. Does the Trustline registry process provide sufficient background check information? Explain your response.

[5] Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comment on the Appropriate Background Check Requirements for Transportation Network Company Drivers who Transport Unaccompanied Minors (Trustline ruling), issued October 26, 2015, http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M155/K377/155377217.PDF.

3. Should the Commission allow any TNC, who intends to retain drivers to transport unaccompanied minors, perform a background check protocol for each driver that is different from the Trustline registry process? If so:

   a. Identify and describe with specificity the steps in an alternative proposed background check protocol, including but not limited to the databases reviewed, the individual history reviewed, the years for which review is conducted, and the confidentiality provisions of the protocol;

   b. Identify which steps in an alternative proposed background check protocol would be performed by the entity licensed by the Commission and which would be performed by a third-party provider of background check services;

   c. Identify how, where a TNC entity seeks to use an alternative proposed background check protocol, a member of the public can access information about an individual either during the background check process or once the individual has become a driver transporting unaccompanied minors;

   d. Explain how the alternative proposed background check protocol meets or exceeds the information developed during the Trustline registry process;

   e. ıdentify all jurisdictions and contexts where the alternative proposed background check protocol has been implemented to meet a regulatory requirement related to adults working with unaccompanied minors, and cite the regulatory requirement;

   f. Identify the approximate cost and time required for the alternative background check protocol;

   g. Explain how successful the alternative proposed background check protocol, where implemented has been in detecting applicants with criminal histories such that the entity did not permit them to engage in work with unaccompanied minors.

   h. Explain how the Commission can review and enforce a licensed entity's compliance with an alternative proposed background check protocol, where some of the steps in the protocol are performed by a third-party non-public provider.

4. Should the Commission permit all licensed transportation entities, including TNCs, TCPs, and PSCs, that transport unaccompanied minors, to select between Trustline and a second background check protocol, if the Commission determines that a second protocol is sufficient to meet the Commission's requirements?

2. Discussion

2.1. Public Safety and Consumer Protection

2.1.1. Should the Commission require all TCPs, including TNCs, to inspect vehicles on a biennial, mileage or other basis, and to maintain and make available a record of each inspection?

2.1.1.1. Party Comments

Parties' comments addressing the basis of vehicle inspections are summarized below.

Rasier-CA, LLC (Rasier) and Lyft, Inc. (Lyft) both believe the current annual inspection requirement is sufficient to ensure public safety and consumer protection. Rasier states that it "is not aware of any evidence indicating that vehicle inspections performed on a 'biennial' or 'mileage' basis ensures a greater level of safety."[6] Lyft asserts that "TNCs impose further vehicle safety and maintenance standards, such as Lyft's requirements limiting the age of the vehicle, which help ensure that older and less reliable vehicles are not used to provide rides to Lyft users."[7] Sidecar Technologies, Inc. and Side.CR, LLC (Sidecar) recommends inspection on a biennial basis, "[w]hen combined with a complaint-based vehicle inspection policy such as Sidecar employs."[8]

[6] Opening Comments of Rasier-CA, LLC on the Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for ☼ Phase II of Proceeding ("Rasier opening comments"), filed May 22, 2015 at 3.

[7] Opening Comments of Lyft on Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for Phase II of Proceeding ("Lyft opening comments"), filed May 22, 2015 at 3.

[8] Opening Comments of Sidecar Technologies, Inc. and Side.CR, LLC on the Issues for Phase II ("Sidecar opening comments"), filed May 22, 2015 at 3.

Lyft and Sidecar additionally contend that introducing inspections based on mileage are inappropriate due to challenges in implementing such a policy. Lyft argues that because TNC vehicles/drivers' vehicles are not driven solely for commercial purposes, distinguishing between personal and commercial use is not possible.[9] Sidecar asserts that mileage-based inspections would be "complicated and costly to implement" since it would necessitate "almost real-time tracking of drivers in order to be implemented."[10]

San Francisco International Airport and San Francisco Municipal Transportation Agency (SFO/MTA) supports an annual basis for vehicle inspections, and proposes a 375,000 maximum mileage limit, stating that "[t]he mileage maximum helps the City ensure the overall quality of vehicles used to convey members of the public."[11] SFO/MTA additionally recommends making vehicle inspection records available to SED upon request, and annual aggregate reporting on inspections.

San Francisco Taxi Workers Alliance (SFTWA) supports requiring inspections at least annually, or else every 50,000 – 100,000 miles. In making its recommendation, SFTWA notes that San Francisco taxi vehicles are inspected once or twice a year depending on age, and are subject to unscheduled inspections at any time.[12] SFTWA further notes that taxis typically put on 75,000-100,000 miles or more a year, and asserts that "[m]ost TCP vehicles are similarly in full-time commercial use, as are many TNCs."[13] SFTWA recommends the records be made available to regulators and the public.

[9] Lyft opening comments at 3-4.
[10] Sidecar opening comments at 3.
[11] Opening Comments of San Francisco International Airport and San Francisco Municipal Transportation Agency to Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for Phase II Proceeding (SFO/MTA opening comments), filed May 26, 2015 at 3.
[12] Opening Comments of SFTWA on the Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for Phase II of Proceeding (SFTWA opening comments), filed May 22, 2015, at 3, referencing San Francisco Transportation Code, Division II, Section 1113(s)(1).
[13] SFTWA opening comments at 2-3.

Greater California Livery Association (GCLA) asserts that annual inspection is sufficient, and that TNC operators should keep records of vehicle inspection and retain copies of all maintenance performed.[14]

Dolan argues that TNCs are common carriers, and the model inspection program provided in California Code of Regulations, Title 13, § 1232 should be implemented for all TNCs and TNC drivers.

2.1.1.2. Discussion

While annual inspections should be sufficient to ensure public safety and consumer protection in cases where a vehicle is driven for incidental or 'part-time' TNC service, some vehicles may be driven frequently and should therefore be subject to inspection based on their accumulated mileage. Lyft's distinction between miles driven for personal as opposed to commercial purposes does not support its position against a mileage-based inspection, as TNCs would not need to separately track miles driven based on purpose (*i.e.*, personal vs. commercial); they would only need to track total mileage (*i.e.*, for any purpose) starting from the vehicle's most recent inspection. For this same reason, we are not persuaded by Sidecar that adding a mileage-based inspection requirement would impose an unreasonable incremental cost or burden, given the increased assurance that vehicles driven extensively will undergo additional inspection.

We commend those TNCs and TCPs that have voluntarily adopted additional vehicle safety policies, in which context this addition to *minimum* requirements should encourage innovation as to how carriers may continually distinguish their services from their competitors'. As such, all TCP vehicles, including TNCs, shall be inspected by a facility licensed by the California Bureau of Automotive Repair (a) before the vehicle is first introduced into service as a TCP or TNC vehicle; and (b) every 12 months or 50,000

[14] Comments on the Issues Identified Under the Headings Public Safety and Consumer Protection (2.1) and Fostering Comments (2.2) of Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for Phase II of the Proceeding ("GCLA opening comments"), filed May 22, 2015 at 2.

miles thereafter, whichever occurs first. TCPs and TNCs shall be responsible for ensuring that each of their vehicles/ drivers' vehicles complies with this requirement, and shall maintain records of such compliance for a period of three years. This requirement shall apply to drivers presently driving for TNCs.

2.1.2. Who should be allowed to conduct the vehicle inspections?

2.1.2.1. Party Comments

Rasier, Lyft, and Sidecar support existing regulation, which allows TNC vehicle inspections to be performed by a TNC or an authorized third-party facility licensed by the California Bureau of Automotive Repair. Rasier states that it "is not aware of any evidence on the record in this rulemaking contradicting the Commission's conclusion that vehicle inspections conducted by a TNC or Bureau of Automotive Repair -authorized third-party facility promote public safety."[15] Similarly, Lyft states it "is not aware of any mechanical failures in California that have resulted in injury."[16] Lyft, which uses "driver inspectors" to perform their vehicle inspections, contends that its approach is "working well" and that requiring third party inspections "would also add cost and friction to the driver on-boarding process, discouraging casual drivers, who only drive 10-20 hours a week, from driving on a TNC platform."[17] Sidecar, which states that it has contractual agreements for vehicle inspections with facilities licensed by the California Bureau of Automotive Repair, "suggests that TNC-performed inspections should be conducted by a licensed mechanic employed by the TNC."[18]

SFO/MTA and Dolan believe that only automotive technicians licensed by the California Bureau of Automotive Repair should be allowed to conduct inspections. SFO/MTA notes that under the current requirement, an individual "with no automotive expertise whatsoever" may conduct the vehicle inspection.[19]

[15] Rasier opening comments at 4-5.
[16] Lyft opening comments at 4-5.
[17] Lyft opening comments at 5.
[18] Sidecar opening comments at 3-4.
[19] SFO/MTA opening comments at 4.

SFTWA proposes that only inspections from trustworthy entities such as the California Highway Patrol can be relied upon, rather than inspections performed by the TNC itself. In its comments, SFTWA notes that San Francisco taxi vehicle inspections are conducted by the San Francisco International Airport's Ground Transportation Unit, a function of the San Francisco Police Department.[20]

GCLA recommends that TNC vehicle inspections should be conducted at "private-sector independent inspection stations (similar to smog inspection stations)…to ensure the consumer-grade, non-commercial vehicles meet minimum safety standards for public transportation."[21]

2.1.2.2. Discussion

We agree with SFO/MTA that the current requirement does not set a standard in terms of minimum qualifications of the individual performing vehicle inspections.[22] Without such a standard, TCPs performing their own vehicle inspections may choose to save time and expense by performing inspections that may not be as rigorous and comprehensive as those at licensed facilities. Requiring inspections to be performed by licensed third-party facilities reduces the chance that an unfit vehicle will pass inspection, thereby enhancing public safety.

We find merit in Sidecar's suggestion for maintaining the current regulation, but specifying that TNC-performed inspections must be performed by a licensed mechanic employed by the TNC. However, the record in this proceeding is lacking with respect to the appropriate entity/entities for licensing or certifying individual mechanics. The California Bureau of Automotive Repairs performs licensing for automotive repair dealers, smog check stations, brake and/or lamp stations, smog check inspectors and/or smog check repair technicians, and brake and/or lamp adjusters,[23] while Automotive

[20] SFTWA opening comments at 3-4.
[21] GCLA opening comments at 2.
[22] SFO/MTA opening comments at 4.
[23] *See* the California Bureau of Automotive Repair's "Getting Licensed" webpage, https://www.bar.ca.gov/Industry/Getting_Licensed.html.

Service Excellence Certification provides comprehensive auto mechanic certification in the areas of Parts Specialist and Service Consultant.[24]

We affirm that, pursuant to Pub. Util. Code § 5389, TCPs, including TNCs, shall maintain records for a period of three years demonstrating that all vehicles were inspected by a California Bureau of Automotive Repair licensed facility ~~at the appropriate 12-month~~ (a) before the vehicle is first introduced into service as a TCP or TNC vehicle; and (b) every 12 months or 50,000 ~~mile mark~~ miles thereafter, whichever occurs first as ordered here, and shall make such records available for inspection by the Commission.

2.1.3. Should the Commission apply the 19-point vehicle inspection checklist adopted in D.13-09-045 to all TCP vehicles except those TCP vehicles already subject to a statutory inspection program?

2.1.3.1. Party Comments

SFTWA, Sidecar, and Dolan all support applying the 19-point vehicle inspection checklist to all TCP vehicles. Rasier does not object to applying the 19-point vehicle inspection checklist to all TCP vehicles.[25]

SFO/MTA recommends expanding the 19-point inspection to include consideration of an additional maximum mileage limit, stating that "[t]he mileage maximum helps the City ensure the overall quality of vehicles used to convey members of the public."[26]

GCLA opposes the 19-point inspection requirement, asserting that existing Commission regulations pertaining to TCP commercial vehicles are sufficient to protect public safety.[27]

[24] http://asecertificationtraining.com/california-auto-mechanic-license-requirements.
[25] Rasier opening comments at 5.
[26] SFO/MTA opening comments at 3.
[27] GCLA opening comments at 2.

2.1.3.2. Discussion

Except for certain vehicle types, as detailed below, TCP vehicles are not currently subject to any minimum vehicle inspection requirements. Establishing a standard for vehicle inspections would ensure that the riding public can expect a consistent level of vehicle safety from all Commission-regulated carriers, regardless of carrier type.

Vehicles defined as a bus pursuant to California Vehicle Code § 233 undergo annual California Highway Patrol (CHP) terminal inspections pursuant to California Vehicle Code § 34501(c), and modified limousines as defined in Pub. Util. Code § 5361 are subject to CHP inspection pursuant to California Vehicle Code 34500.4. We will apply the 19-point vehicle inspection checklist to all TCP vehicles, except vehicles defined as a bus pursuant to California Vehicle Code § 233, and modified limousines as defined in Pub. Util. Code §5361. Pursuant to Pub. Util. Code § 5389, TCPs, including TNCs, shall maintain records demonstrating that the 19-point checklist was followed and the vehicle passed inspection, for a period of three years, and shall make such records available for inspection by or production to the Commission.

2.1.4. What driver-specific and/or vehicle-specific information, if any, should the Commission require TNCs to provide, and how does collection of such data by the Commission enhance consumer protection and public safety beyond the TNCs' own quality control, such as driver rating systems?

2.1.4.1. Party Comments

Rasier, Lyft, and Sidecar each advise against expanding the current reporting requirements absent a clear connection between new requirements and enhanced public safety. In its comments, Rasier states that it "is not aware of any evidence in the record of this rulemaking that would support the conclusion that the collection of driver-specific and/or vehicle-specific information would further a legitimate regulatory interest." Rasier encourages a workshop to tailor the request for any additional data to meet identified

regulatory interests.[28] Lyft states that "if the Commission were to amass large quantities of sensitive TNC data, the Commission could be unintentionally creating a significant legal burden for both its own staff and the TNCs," given the requirements to protect confidential data.[29] Sidecar expresses uncertainty as to whether the data currently required in the TNCs' annual reports enhances consumer protection and public safety, and recommends retaining the existing reporting requirements unless a clear connection to public safety or consumer protection can be established.[30]

SFO/MTA states it is "unclear how the Commission is able to validate that vehicles have been inspected and that drivers are free of disqualifying criminal records and driving histories" and questions the reliability of the TNCs' background checks as those checks do not rely on fingerprints.[31] SFO/MTA questions how collecting driver and vehicle information will advance public safety, but suggests reports of aggregated vehicle inspection data, quarterly reports of aggregated driver-applicant pass rates, immediate and aggregate quarterly reporting of collisions requiring Traffic Accident Reports (known as SR1 reports), and immediate and aggregate reporting of known contact between law enforcement and TNC drivers.[32]

SFO/MTA recommends that the Commission post all aggregate reports on its website.[33]

GCLA asserts that "[Commission] regulations pertaining to TCP drivers should be applied equally to TNCs," including driver drug testing and participation in the DMV Pull Notice Program. GCLA additionally recommends the use of fingerprint-based background checks for screening TCP and TNC drivers.[34]

SFTWA's preferred regulatory approach is for the Commission to institute a permitting process and requiring Department of Justice background checks for TNC

[28] Rasier opening comments at 5-6.
[29] Lyft opening comments at 7.
[30] Sidecar opening comments at 5.
[31] SFO/MTA opening comments at 5.
[32] SFO/MTA opening comments at 6-7.
[33] SFO/MTA opening comments at 6-7.
[34] GCLA opening comments at 3.

drivers. SFTWA also recommends requiring a TNC vehicle list to be filed with the Commission, which it asserts will provide a record for purposes such as verification of compliance with the TNC regulations, identifying vehicles that are unlawfully providing TNC services, determining compliance with federal and state requirements for persons with disabilities, estimating TNCs' environmental impact, and preventing insurance fraud and protecting consumers from insufficient liability coverage. Finally, SFTWA recommends requiring TNC vehicles/drivers' vehicles to display some form of permanent identification to enhance public safety.[35]

2.1.4.2. Discussion

We will not require TNCs to provide additional information to the Commission. Our enforcement program involves in-the-field inspections and record audits. We expect that TNC drivers inspected in the field by SED will be able to demonstrate compliance with all applicable regulations, and we do not currently see that an in-house Commission database would add to public safety.

As SFO/MTA correctly points out, SR1 reports are required for any collision that results in property damages in excess of $750 or bodily injury or death to any person.[36] Yet as we have learned from the comments, TNCs do not collect SR1 reports, nor do they require TNC drivers to provide them with a copy of the SR1 report. We believe that the reporting requirements in D.13-09-045 for incidents are a sufficient reporting tool for Commission staff to track and report on the number of incidents.

We affirm that, pursuant to Pub. Util. Code § 5389, SED may inspect TNC records, including, but not limited to, proof of required liability insurance, criminal background check information, TNC driver's license and driving record, and vehicle inspection records.[37] TNCs shall provide notice to their drivers that the driver's consent is not needed for disclosure of their information to the Commission.

[35] SFTWA opening comments, at 4-5.
[36] https://www.dmv.ca.gov/portal/dmv/detail/forms/sr/sr1.
[37] D.13-09-045, Decision at 26-29.

Finally, we note that the DMV Pull Notice program became available to TNCs with the signing into law of Assembly Bill 1422 (Cooper) on October 11, 2015.

2.1.5. Should the Commission require TNCs to obtain and/or provide information on driver suspensions, deactivations, and subsequent reactivations? If so, what frequency and what level of detail are reasonable?

2.1.5.1. Party Comments

Rasier, Lyft, and Sidecar each object to requiring TNCs to obtain and/or provide information on all driver suspensions or deactivations and subsequent activations, asserting that drivers are routinely deactivated for reasons unrelated to public safety, and therefore questioning the public safety benefit of collecting all driver deactivation/reactivation data. Rasier suggests that the Commission instead require annual information on TNC drivers suspended or deactivated for public safety reasons, such as zero-tolerance policy violations, threatening a passenger, or assaulting a passenger.[38]

SFO/MTA, GCLA, and SFTWA each support reporting TNC driver suspensions and deactivations to the Commission. SFO/MTA recommends quarterly reporting of such information.

2.1.5.2. Discussion

We will not require TNCs to provide information on driver suspensions, deactivations, and subsequent reactivations to the Commission. However, we find merit in Rasier's suggestion for an annual report on TNC drivers who have been suspended or deactivated for public safety reasons. Because we are also concerned with consumer protection, we will expand this report to include driver suspensions and deactivations for consumer protection reasons. TNCs shall submit an annual report identifying the TNC drivers they have suspended or deactivated for any reasons relating to safety and/or consumer protection, including but not limited to:

[38] Rasier opening comments at 6.

1. Violation of the zero-tolerance policy,
2. Assaulting a passenger or any member of the public while providing TNC services,
3. Threatening a passenger or harassing any member of the public while providing TNC services, and
4. Soliciting business that is separate from those arranged through the TNC's app (i.e., transportation services that may not be covered by any Commission-required insurance policies).

We again confirm that TNCs must cooperate with data requests from SED. Pursuant to Pub. Util. Code § 5389, SED may inspect TNC records, including information on driver suspensions, deactivations, and subsequent reactivations. We will require that TNCs provide notice to their drivers that the driver's consent is not needed for disclosure of their information to the Commission.

2.1.6. Should the Commission Require any Improvements to the TNC Driver~~-~~ Training Programs?

2.1.6.1. Party Comments

Rasier, Lyft, and Sidecar all assert that their existing driver training programs are designed to adequately protect consumers and enhance public safety. Rasier's driver training program requires drivers to complete a self-directed quiz, and includes educational videos showing "best practices" for their drivers.[39] Lyft's ongoing driver training program includes podcasts and videos addressing safe driving practices and assisting disabled passengers.

SFO/MTA believes regulations should be developed to provide uniform training via a "Commission-approved video or interactive computer-based program that requires the trainee to respond to questions before advancing to the next section, and which issues a certificate to applicants who successfully complete the training."[40]

GCLA recommends adopting a driver-training program utilized by TCPs, while SFTWA recommends adopting a driver-training program identical to that utilized by San

[39] Rasier reply comments at 12.
[40] SFO/MTA opening comments at 7.

Francisco taxi drivers. The San Francisco taxi driver program requires completion of a 28-hour course through an accredited school, and a further day of training conducted by the San Francisco Municipal Transportation Agency (SFMTA).[41]

2.1.6.2. Discussion

The Commission will refrain from setting the requirements for specific driver training programs at this time. However, we require that each TNC train its drivers and regularly refresh their knowledge of the state and federal regulatory requirements they are subject to, including but not limited to trade dress and evidence of prearrangement (D.13-09-045), waybill contents (Pub. Util. Code § 5381.5), service animals (28 C.F.R. § 36.302(c)(1)), proof of insurance
(Pub. Util. Code § 5442), operating without proper authority, airport rules including those relating to airport drop-offs and pick-ups (Pub. Util. Code
§ 5371.4(g)), and soliciting business separate from app-based arrangements. We also require the TNCs to keep current copies of their driver training materials and curricula on file with the Commission, similar to the current requirement that TNCs keep current copies of their trade dress on file with the Commission. It is clear to the public that TNC drivers are ambassadors for TNCs, and TNCs' interests are better served by well-trained, courteous drivers.

2.1.7. Should the Commission require that all TNCs transporting unaccompanied minors comply with the requirements set forth in D.97-07-063?

By way of background, in D.97-07-063, the Commission adopted rules for a new market niche form of PSCs that specialized in the common carriage of infants and children, and parents, guardians and child-care providers accompanying the children. The transportation is known as Infant and Child Common Carriers (sometimes called kids' shuttles), a form of common carriage that responds to the market comprised of

[41] GCLA opening comments at 3.

unaccompanied children.[42]

The Commission adopted additional rules in response to the Commission's — as well as the public's — interest in assuring the safety of unaccompanied minor passengers by having the carriers conduct criminal background checks of drivers and other employees transporting children passengers, by utilizing the Department of Justice's Trustline program, requiring driver training, and imposing a restriction on these carriers to prohibit the intermixing of unaccompanied children in the same vehicle with adult passengers who have no affiliation with a child passenger. These rules were designed to apply to "PSC carriers whose operations primarily concern, or specialize in, the transportation of unaccompanied infants and children."[43]

As for those permitted TNCs that specialize in the transportation of unaccompanied minors, they must comply with the background requirements specified in D.97-07-063. The gray area that we must address concerns those TNCs whose operations are not exclusively devoted to the transportation of unaccompanied minors. As D.97-07-063 did not define the word "primarily," there is some uncertainty as to how much or what percentage of a TNC's business must involve transporting unaccompanied minors before it is considered a TNC operation that "primarily" transports unaccompanied minors for the background requirements of D.97-07-063 to be triggered.

For now, the Commission intends to apply the standards adopted in D.97-07-063 as its baseline that will be applicable to TNCs that primarily transport unaccompanied minors. But in order to provide greater clarity, the assigned Commissioner will issue an Assigned Commissioner's Ruling that places some parameters on the term "primarily." In determining these parameters, the Commission will take into account the information provided by the parties to the following topics that we now discuss in this decision.

[42] In D.97-07-063, we explained that "unaccompanied children" includes "transportation of an affiliated adult accompanying a child during, or incidental to, the transportation at issue." (73 CPUC2d 640, 663, footnote 4.)

[43] 73 CPUC2d at 644.

2.1.7.1. Party Comments to the Amended Scoping Ruling

The Amended Scoping Ruling issued on April 28, 2015, posed the broad question above, to which parties responded in broad terms. The Commissioner's October 28, 2015 ruling subsequently asked a series of detailed questions, and party comments responding to those questions are discussed below.

In response to the April 28, 2015 Amended Scoping Ruling, Rasier, Lyft, and Sidecar all assert that the requirements of D.97-07-063 should not be applied to TNCs because their policies prohibiting anyone under the age of 18 from taking unaccompanied TNC trips obviate the need for such rules. Lyft additionally contends that verifying the identity of each passenger would be unworkably burdensome and intrusive.[~~42~~44]

SFO/MTA and GCLA support mandating TNC compliance with the requirements of D.97-07-063. SFO/MTA asserts that unless a TNC prohibits transporting unaccompanied minors and has a Commission-approved means of verifying that a ride request will not result in the transportation of unaccompanied minors, the Commission should amend the background check regulation and require the Trustline background check referenced in D.97-07-063 for all TNC drivers.[~~43~~45]

Shuddle, Inc. (Shuddle), urges the Commission to determine that the requirements of D.97-07-063 do not apply to TNCs, as it believes Trustline to be outdated. Shuddle encourages the Commission to adopt a background check process utilizing multiple nationwide and local criminal databases and court records.[~~44~~46]

2.1.7.2. Party Comments to the October 26, 2015 Ruling

Dolan, GCLA, HopSkipDrive Inc. (HopSkipDrive), Shuddle, SFTWA, Lyft and SFO/MTA submitted opening comments in response to the October 26, 2015 Ruling

[~~42~~44] Reply Comments of Lyft on Assigned Commissioner and Administrative Law Judge's Ruling Amending the Scoping Memo and Ruling for Phase II of Proceeding (Lyft reply comments) filed June 8, 2015 at 9.

[~~43~~45] SFO/MTA opening comments at 9.

[~~44~~46] Opening comments of Shuddle, Inc. on Phase Two of Proceeding (Shuddle opening comments), filed May 22, 2015 at 7-9.

(Trustline Ruling). CALinnovates, SFO/MTA, SFTWA, Ed Healy, and Shuddle submitted reply comments.

2.1.7.2.1. Should the Commission require any TNC intending to retain drivers to transport unaccompanied minors ensure that each TNC driver successfully completes the Trustline Registry application and the Live Scan request forms in order to become a driver for that TNC?

HopSkipDrive, Dolan, GCLA, SFO/MTA, recommend that the Commission require TNC drivers who transport unaccompanied minors to submit fingerprints through the Trustline registry process, and that such drivers be accepted as members of the Trustline registry, as prerequisites to transporting unaccompanied minors. SFO/MTA highlights the fact that access to the Child Abuse Central Index (CACI) is limited by statute, noting that "[b]ackground check services like those used by Shuddle have no means of accessing the CACI database…"~~45~~47

Shuddle asserts that "[t]he Commission should instead require such TNCs to use a process that conforms to well-established protocol in the background screening industry…Trustline relies on incomplete and likely outdated, proprietary information from the California DOJ and the FBI's criminal history records."~~46~~48

~~45~~47 Reply comments of San Francisco International Airport and San Francisco Municipal Transportation Agency to Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comment on the Appropriate Background Check Requirements for Transportation Network Company Drivers who Transport Unaccompanied Minors, filed November 12, 2015 at 3.

~~46~~48 Opening comments of Shuddle, Inc. Regarding Background Check Requirements for Transportation Network Carriers That Transport Unaccompanied Minors (Shuddle opening comments on Trustline Ruling) filed November 12, 2015 at 4.

2.1.7.2.2. Does the Trustline registry process provide sufficient background check information?

Dolan and GCLA respond that the Trustline registry process provides sufficient background check information. SFTWA agrees.[~~47~~49]

SFO/MTA states that the background paper attached to the Trustline Ruling indicates that the Trustline process provides sufficient information to protect the public, but urges the Commission to implement a second mandatory background check protocol in the event it finds that Trustline is insufficient.[~~48~~50]

HopSkipDrive agrees, and explains that it uses a third party background screening company to run county and federal criminal records checks and National Sex Offender checks to confirm that an applicant has a clean criminal record outside California. [~~49~~51]

Shuddle contests whether Trustline provides sufficient background check information, asserting that the FBI database is incomplete with respect to (i) disposition of arrests, and (ii) crimes committed outside California. Regarding CACI, Shuddle states that "[t]he DOJ does not make clear how often the records are updated."[~~50~~52]

Shuddle's comments include a description of the process it employs, using a private background screening company (RedRidge) and including a list of the databases that RedRidge has access to for checking criminal history records.[~~51~~53]

2.1.7.2.3. Should the Commission allow any TNC, who intends to retain drivers to transport unaccompanied minors, perform a background check protocol for each

[~~47~~49] SFTWA opening comments on Trustline Ruling at 3-4.
[~~48~~50] SFO/MTA opening comments on Trustline Ruling at 3-4.
[~~49~~51] HopSkipDrive opening comments on Trustline Ruling at 4-5.
[~~50~~52] Shuddle opening comments on Trustline Ruling at 5.
[~~51~~53] Shuddle opening comments on Trustline Ruling at 6-9 and Attachment A (Declaration of Christian A. Moore Supporting Opening Comments of Shuddle, Inc. Regarding Background Check Requirements for Transportation Network Carriers That Transport Unaccompanied Minors); and Exhibit B (Jurisdiction Source List for National Criminal Database Search).

driver that is different from the Trustline registry process?

GCLA responds "No." SFTWA suggests that TNCs that do not hold themselves out as providers of services to unaccompanied minors should not have to register with Trustline, but should have to undergo a Live Scan fingerprint background check.[~~52~~54] HopSkipDrive, Dolan, SFO/MTA, all agree but add that the Commission should either permit or order TNCs to perform supplemental background checks in addition to Trustline.

Shuddle responds yes, stating that its company process can accomplish background checks with the same or greater accuracy and thoroughness as the Trustline process.[~~53~~55]

2.1.7.2.4. **Should the Commission permit all licensed transportation entities, including TNCs, TCPs, and PSCs, that transport unaccompanied minors, to select between Trustline and a second background check protocol, if the Commission determines that a second protocol is sufficient to meet the Commission's requirements?**

GCLA and Dolan respond no.[~~54~~56] SFTWA suggests that only Commission-regulated transportation entities that do not regularly provide service to unaccompanied minors should be allowed to choose between the Trustline Registry and Live Scan fingerprint background checks for all their drivers.[~~55~~57] SFO/MTA also responds "No," and that any second background check protocol should be an adjunct to and not a substitute for the Trustline registry.[~~56~~58]

HopSkipDrive responds "Yes," as long as fingerprinting is a required element of the second background check protocol.

[~~52~~54] SFTWA opening comments on Trustline Ruling at 4.
[~~53~~55] Shuddle opening comments on Trustline Ruling at 6.
[~~54~~56] Dolan opening comments on the Trustline Ruling at 6.
[~~55~~57] SFTWA opening comments on the Trustline Ruling at 4.
[~~56~~58] SFO/MTA opening comments on the Trustline Ruling at 5.

Shuddle responds "Yes," and states its belief that its proposed screening process is a viable alternative to Trustline.[~~57~~59]

2.1.7.3. Discussion

We address two distinct questions: first, should the Commission maintain Trustline as the standard for all PSCs, TCPs, and TNCs that primarily transport unaccompanied minors? Second, if a modified standard is warranted, should it replace Trustline, be added as a mandatory addition to Trustline, or be added as an option in addition to Trustline?

As to the first question, even with the uncertainty over the use of the term "primarily," we affirm that carriers that primarily transport unaccompanied minors must comply with the requirements set forth in D.97-07-063, including successfully completing the Trustline registry process for any and all drivers.[~~58~~60] Trustline offers distinct consumer protection advantages that are not available when a company uses a private background check service. First, Trustline provides information to the public about the status of an applicant through a toll-free number. Second, Trustline maintains and continually updates the list of Trustline registered individuals.

Some parties, such as Shuddle, raise concerns about the coverage, accuracy, and timeliness of information in the federal and state criminal history databases that are searched during the Trustline registration process. We acknowledge that those drawbacks are present, but note that while Shuddle states that its criminal records search involves searches of "commercial criminal history databases," it does not provide the data or sources that are included in such commercial databases. Without information to draw a comparison, we will rely instead on the primary databases used by law enforcement in California and nationally for our purposes.

[~~57~~59] Shuddle opening comments on the Trustline Ruling at 12-13.

[~~58~~60] Pursuant to Pub. Util. Code § 5382, "[t]o the extent that such are not inconsistent with the provisions of this chapter, all general orders, rules and regulations, applicable to the operations of [passenger stage corporations], unless otherwise ordered by the commission shall apply to charter-party carriers of passengers."

In addition, no party has offered a reliable, permanent means by which the public can access the status of individuals undergoing a background check by a private background screening company. Shuddle states that it is willing to make the background check process and results available to regulators, but that is not our goal. We find that there is an important consumer protection purpose served by Trustline's toll-free number that a member of the public can call to find out the status of an individual applicant, and that Trustline is unique in this respect.

As to the second question, and for the reasons stated above, we do not find sufficient information in the record before us to require additional criminal history screening beyond the requirements set forth in D.97-07-063 and the Trustline process. Should a PSC, TCP, or TNC that primarily transports unaccompanied minors wish to perform additional criminal history screening in order to distinguish itself in the market from its competitors, it is free to do so. Similarly, the checks on identity, searches for court records, social security number traces, credit checks, and other checks described by the parties engaged in such services are means by which they distinguish themselves to their customers. Thus, any additional applicant screening is an optional addition to the Trustline requirement.

Finally, in response to the requested clarification, D.97-07-063 applies to any passenger carrier that primarily transports unaccompanied minors. Any passenger carrier that prohibits persons under 18 from using their app or other arrangement system is strongly urged to make such policies clearly visible to all users.

2.1.8. In light of California's new statutory insurance requirements for TNCs, should TNCs be required to file certificates of insurance electronically that may only be canceled with a 30-day notice from the insurance company, as currently required of TCPs, as set out in GO-115 and Resolution TL-19105?

2.1.8.1. Party Comments

Sidecar, SFO/MTA, GCLA, and SFTWA all support the proposed requirement that TNCs be required to file certificates of insurance electronically that may only be cancelled with a 30-day notice, while Rasier and Lyft do not object to the proposal.

2.1.8.2. Discussion

This issue was unopposed by all parties commenting on the Rulemaking. General Order 115-F's 30-day cancellation notice will allow the Commission to monitor TNC compliance with insurance requirements and receive timely notification of defaults or policy cancellations. The electronic insurance certificate-filing requirement of Resolution TL-19105 is intended to streamline the filing process and improve the accuracy of reporting. We agree with the parties that TNCs should be required to file certificates of insurance pursuant to
GO 115-F and Resolution TL-19105.

2.1.9. Should the Commission reconsider the $20,000 maximum fine for staff citations for violations of all TCPs, including TNCs?

2.1.9.1. Party Comments

Rasier, Lyft, and Sidecar all believe that the Commission does not need to reconsider the fine structure because the current system "has proven sufficient to deter violations."[~~59~~61]

[~~59~~61] Lyft Opening Comments at 9; Rasier Reply Comments at 16.

SFO/MTA and GCLA both support reconsideration of the fine structure, and encourage the Commission to develop a penalty structure that will gain consistent compliance with regulations.

2.1.9.2. Discussion

We agree with SFO/MTA that TNCs are rapidly changing the commercial passenger transport industry. While the $20,000 maximum staff citation fine can serve as a financial deterrent for new or small companies, this amount may not ensure compliance by companies that have established a dominant presence in the market. We note, in addressing this question, that the record is incomplete regarding the effectiveness of this compliance mechanism. Absent compelling evidence suggesting otherwise, we will maintain the $20,000 maximum fine for informal staff citations.

2.2. Fostering Innovation

2.2.1. Should any improvements be considered to the TCP and TNC application processes?

2.2.1.1. Party Comments

Lyft believes that the annual reporting requirements for maintaining a TNC permit should not include the requirement to provide the "amount paid by the driver's insurance, the TNC's insurance, or any other source" as a result of an incident or accident involving a TNC driver.

SFO/MTA asserts that regulations must be developed to reliably determine whether TNCs provide service to unaccompanied minors and, if they do, to require Department of Justice background checks on all drivers, and that this requirement should be clear in TNC applications.[~~60~~62]

GCLA asserts that the current application process is antiquated, and notes that "[t]here is currently adequate funding in the [Commission's] PUCTRA account to provide for a major overhaul of the" application process. GCLA suggests forming a

[~~60~~62] SFO/MTA comments at 10.

working group of staff, TCP and TNC representatives "to make recommendations for streamlining the application processes for improved efficiency and service."[~~61~~63]

2.2.1.2. Discussion

No changes will be made to the TCP and TNC application processes at this time.

2.2.2. Are the Commission's present trade dress rules adequate to ensure public safety and consumer protection, and to encourage innovation?

2.2.2.1. Party Comments

SFO/MTA, GCLA, and SFTWA all maintain that current trade dress rules are inadequate to ensure public safety and consumer protection, and advocate requiring permanent TNC trade dress. For example, SFTWA asserts that the current trade dress is easy to hide, which can hamper investigations and lead to insurance fraud. As an alternative to requiring permanent trade dress, SFO/MTA suggests requiring TNCs to predicate tip payment on whether a TNC vehicle is displaying trade dress. GCLA believes TNCs should be required to display their permit numbers in the same permanent manner required for TCPs.

Rasier, Lyft, and Sidecar all assert that current trade dress rules are adequate, and oppose the proposals requiring permanent trade dress. They assert that permanent trade dress would confuse passengers when the vehicle is being used for personal use. Rasier suggests that the Commission clarify that trade dress may be placed in a window, including the front or back windshield. Lyft requests clarification that the existing rule does not prohibit use of more than one type of trade dress by a TNC, "as long as such use is a result of the TNC transitioning or upgrading its trade dress, or implementing a trade dress modification to make vehicles more identifiable at night."

2.2.2.2. Discussion

In D.13-09-045, this Commission specified the following trade dress rules:

[~~61~~63] GCLA opening comments, at 4.

> 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 at least 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.[~~62~~64]

We agree with SFO/MTA, GCLA, and SFTWA that current rules regarding rear-facing trade dress are inadequate to ensure public safety and consumer protection. Without a rear-facing trade dress identifying a vehicle as a provider of TNC services, those sharing the road are not provided any notice from the rear of a TNC vehicle's presence. Requiring TNC vehicles/drivers' vehicles to display trade dress that is identifiable from both the front and the rear would address this public safety issue without stifling innovation. Drivers, motorcyclists, and bicyclists alike will be able to set more accurate expectations of driver behavior and act accordingly if they know they are behind an active TNC vehicle. On that basis, we reaffirm the above trade dress rule and expand it to include trade dress placed in the rear of a TNC vehicle, as follows (new text underlined):

> TNC vehicles/ drivers' vehicles shall display consistent trade dress <u>in the front and the rear of the vehicle</u> (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 at least 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, <u>or placed in the front and rear windshields</u>. Magnetic or removable trade dress is acceptable. TNC shall file a photograph of their trade dress with the Safety and Enforcement Division.

[~~62~~64] D.13-09-045 at 31, ¶ h.

We do not require permanently affixed trade dress at this time, but reaffirm our requirement that trade dress must be displayed such that a TNC vehicle is readily identifiable during all three periods of TNC service.

2.3. Additional Issues

In their comments, parties raise certain additional issues.

First, SFO/MTA requests the Commission amend the scope to: (1) clarify the definition of "personal vehicle;" and (2) include the issues previously identified in the September 2013 Decision for review during a subsequent workshop. Lyft opposes SFO/MTA's request to expand the scope of the proceeding.[~~63~~65]

Second, in response to the Assigned Commissioner's question about driver information (*see* Section 2.1.4 above), SFO/MTA raises the issue of background checks for TNC drivers and establishing driver identity through fingerprints.

Below, we clarify the definition of personal vehicles, and pose additional questions to further build the record on background checks and fingerprinting.

2.3.1. Personal Vehicles

2.3.1.1. Party Comments

SFO/MTA seeks clarification of the meaning of "personal vehicle" in the context of TNC operations.

Rasier, Lyft, and Sidecar all assert that the definition of "personal vehicle" as used in Decision 13-09-045 may include a vehicle that is not registered in the driver's name. Lyft asserts that this inclusion "comports with the ordinary meaning and common understanding of the term 'personal vehicle,' since millions of Californians lease or rent vehicles for personal use," and refers to Pub. Util. Code § 5362. Lyft and Sidecar further argue against requiring that a TNC vehicle be registered in the TNC driver's name, as this would disproportionately and negatively affect low income individuals, students, non-car-owning spouses and others seeking to drive for a TNC company.[~~64~~66]

[~~63~~65] Lyft reply comments at 2.
[~~64~~66] Lyft reply comments at 12-13, and Sidecar reply comments at 6.

2.3.1.2. Discussion

We first rely on Pub. Util. Code §5362 for guidance as to what "personal" means with respect to vehicles used for TNC services:

> With respect to a motor vehicle used in the transportation of persons for compensation by a charter-party carrier of passengers, "owner" means the corporation or person who is registered with the Department of Motor Vehicles as the owner of the vehicle, or who has a legal right to possession of the vehicle pursuant to a lease or rental agreement.

With respect to "legal right to possession…pursuant to a lease or rental agreement," we look further to Vehicle Code §460:

> An "owner" is a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; the person entitled to the possession of a vehicle as the purchaser under a security agreement; or the State, or any county, city, district, or political subdivision of the State, or the United States, when entitled to the possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 30 consecutive days or more.

Vehicle Code § 370 specifies the same duration (30 consecutive days) for which a lease or rental agreement confers ownership status on the lessee / renter:

> A "legal owner" is a person holding a security interest in a vehicle which is subject to the provisions of the Uniform Commercial Code, or the lessor of a vehicle to the State or to any county, city, district, or political subdivision of the State, or to the United States, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vehicle to the lessee for a period of 30 consecutive days or more.

Finally, we note that Vehicle Code §371 further defines a lessee as "a person who leases, offers to lease, or is offered the lease of a motor vehicle for a term exceeding four months." This same four month requirement is also set forth in Vehicle Code § 372.[67]

[67] A "lessor" is a person who, for a term exceeding four months, leases or offers for lease, negotiates or attempts to negotiate a lease, or induce any person to lease a motor vehicle; and who receives or expects to receive a commission, money, brokerage fees, profit or any other thing of value from the lessee of said vehicle. "Lessor" includes "bailor" and "lease" includes "bailment."

We have set forth the above provisions in recognition of the change that has occurred to the market concept of a TNC vehicle. When the Commission issued D.13-09-045, we used the term "personal vehicle" with the understanding that a TNC driver would be utilizing a vehicle that he/she already owned or leased on an extended basis:

> The primary distinction between a TNC and other TCPs 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.[68]

Thus, "personal vehicle" was understood to mean a vehicle that was owned or leased on an extended basis by the TNC driver.[69]

But since D.13-09-045 was issued, we have learned that TNCs (and/or others) have entered into certain business arrangements where TNCs, or their business partners or subsidiaries, lease vehicles to individuals seeking to provide TNC service.[70] This occurrence has caused us to take a closer look at the concept of the right-of-possession of a personal vehicle. A further consideration requiring clarification from this Commission is the fact that leases may have different minimum time periods as set out in Vehicle Code §§ 370 and 460 ("a period of 30 consecutive days or more") and Vehicle Code §§ 371 and 372 ("a term exceeding four months").

We find that to qualify as a "personal vehicle," as it applies to TNC operations, ~~may include a vehicle obtained pursuant to a lease agreement that complies with Public Utilities Code §5362, Vehicle Code §§460, 370, 371, and any other relevant laws. We note that there is a growing market of companies who lease vehicles to individuals~~

[68] D.13-09-045 at 67, Finding of Fact # 23.

[69] This understanding was also consistent with the TNC marketing materials in existence in 2013, in which drivers were encouraged to utilize their own vehicles to transport TNC passengers for extra income.

[70] www.joinbreeze.com. Rasier-CA and Lyft have also begun to offer a leasing option to potential TNC drivers who do not own a vehicle.

~~seeking to provide TNC service.[65] No matter what vehicle ownership arrangement a driver chooses, the driver must also have personal use of the vehicle. Each TNC must ensure that each personal vehicle used by their drivers complies~~the TNC driver must have a right of possession that is manifested through either (a) ownership of the vehicle; or (b) a lease of the vehicle for a term exceeding four months. This comports with the spirit and intent of D.13-09-045. Moreover, on a policy basis, the longer lease period will ensure that TNC companies and TNC drivers comply with all applicable regulations before placing a vehicle into service, including, but not limited to ~~the~~, driver training, meeting insurance requirements, a 19-point vehicle inspection performed at a California Bureau of Automotive Repair-licensed facility, and trade dress rules.

2.3.2. **Background Checks and Fingerprinting**

At present, except for companies that primarily transport unaccompanied minors, the Commission does not require any passenger carrier company – neither TCPs, TNCs~~,~~) nor PSCs – to perform ~~background~~fingerprint-basedbackground checks on their drivers. Some companies do so voluntarily.

2.3.2.1. **Party Comments**

Lyft and Sidecar advocate against requiring fingerprint background checks. Lyft asserts that fingerprint background checks are reported inconsistently and incompletely, disproportionately affect communities of color, and are not necessary to ensure public safety.

GCLA supports fingerprint-based background checks of all TCP and TNC drivers, noting that "[m]ost large TCP operators in California perform background checks on driver applicants using finger prints to establish true identity."~~66~~71

~~65 www.joinbreeze.com.~~

~~66~~71 GCLA opening comments at 3.

SFTWA also supports Department of Justice background checks for all drivers, and that those background check results should be furnished to the Commission. SFTWA argues that "[d]river ratings cannot possibly substitute for hard information on criminal activity that only a live-scan check may reveal."~~67~~72

SFO/MTA questions the reliability of the background checks currently employed by TNCs.

2.3.2.2. Discussion

Because the assigned Commissioner did not pose this question directly in the Amended Ruling, the record is insufficient for decision-making. Within 60 days of the effective date of this decision, we intend to issue a separate ruling posing questions about background checks and establishing the identity of drivers through methods such as fingerprinting for party comment.

2.3.3. Pub. Util. Code § 5401

Pub. Util. Code § 5401 states as follows:

> Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof. These charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported. However, no charter-party carrier of passengers shall, directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis, except schoolbus contractors who are compensated by parents of children attending public, private, or parochial schools and except operators of round-trip sightseeing tour services conducted under a certificate subject to Section 5371.1, or a permit issued pursuant to subdivision (c) of Section 5384.

The decision to include consideration of Pub. Util. Code § 5401 in this phase of the proceeding resulted from important developments in the TNC industry. The

~~67~~72 SFTWA opening comments at 4-5.

Commission learned in 2014 that certain TNCs, Sidecar first among them, began offering a fare-splitting feature to their subscribing TNC passengers. On September 8, 2014, the Commission's SED wrote separate letters to Uber, Lyft, and Sidecar, and warned that their respective fare-splitting services known as "uberPOOL," "Lyft Line," and "Shared Rides" violated Pub. Util. Code § 5401. At the time, SED advised Uber, Lyft, and Sidecar that the Commission intended to enforce this law. Separately, on September 24, 2014, the District Attorneys for the City and County of San Francisco and Los Angeles County sent a jointly-signed letter to Uber, Lyft, and Sidecar also asserting that "uberPOOL," "Lyft Line," and "Shared Rides" violated Pub. Util. Code § 5401. In response, Uber, Lyft, and Sidecar asserted that Pub. Util. Code § 5401 was not written to prevent the type of carpooling service offered by "uberPOOL," "Lyft Line," and Shared Rides."

On October 10, 2014, Sidecar filed a motion in this proceeding arguing that the applicability of Pub. Util. Code § 5401 to this new element of TNC services was unclear, and in light of that lack of clarity, requested that the Commission expand its scope to consider the issue and in the interim, to refrain from enforcing an interpretation that such services violate that section of law. In two rulings, on October 31, 2014, and November 4, 2014, then-assigned Commissioner Peevey granted Sidecar's motion to expand the scope of the proceeding to consider the issue.

To assist the Commission in addressing this issue, the assigned Commissioner and the Administrative Law Judge issued a ruling on
August 6, 2015, that solicited comments on the applicability of Pub. Util. Code § 5401 to TNCs' fare-splitting services.

2.3.3.1. **Party Comments**

Rasier-CA claims that its uberPOOL service operates consistently with Pub. Util. Code § 5401's requirement that fares be based on either vehicle mileage or time of use, or a combination thereof. Rasier-CA indicates that the fares that uberPOOL drivers charge

riders are based on time and distance. The company describes the process as follows: A rider using the Uber application to search for a transportation provider first enters his or her destination, which the application transmits to software on Uber's servers. On behalf of the driver, the software calculates a preliminary fare that is determined by the expected time and distance to the rider's destination. Next, the Uber software applies an algorithm to determine a discounted fare that is based on additional factors and other adjustments. The calculated fare is transmitted to the rider. Once the ride begins, the Uber application attempts to match the rider with another rider travelling to a similar destination or a destination along a similar route. When the ride is over, Uber's software electronically collects the fare on behalf of the driver.[~~68~~73]

Lyft describes a similar system for Lyft Line. When a user opens the Lyft application, an option to select "Line" appears at the top of the screen. The user is prompted to enter a pick-up location and destination. Before requesting a Lyft Line ride, the user is given a discounted quote calculated based on the user's pickup and drop-off points. Once the user selects Lyft Line, even if the user is not matched with another user, Lyft honors the discounted fare quote. The quote represents a calculation based on time and distance, discounted by an algorithm that accounts for time, distance, time of day and location of the user. The algorithm takes into account historical data, such as traffic congestion and user demand at particular times of day. By providing an estimate of a traditional Lyft ride and a Lyft Line ride at the time of request, Lyft Line allows users to see their estimated savings achieved by sharing rides with other users.[~~69~~74]

SFTWA and the SFMTA dispute these characterizations and argue that Rasier-CA, Lyft, and Sidecar are offering a service that violates Pub. Util. Code § 5401 because the cost of each ride is calculated by charging an individual fare.[~~70~~75]

[~~68~~73] Comments of Rasier-CA on the Impact of Pub. Util. Code § 5401 at 4-5.
[~~69~~74] Comments of Lyft, Inc. on the Impact of Pub. Util. Code § 5401 at 2-3.
[~~70~~75] Comments of SFTWA on the Impact of Pub. Util. Code § 5401 at 1, and 4-6; and Comments of SFMTA on the Impact of Pub. Util. Code § 5401 at 1-3.

SFTWA argues that TNCs, as a subset of TCPs, are subject to the requirements of Pub. Util. Code § 5401 and may not charge individual fares as part of their operations.~~71~~76

Luxor Cab (Luxor) asserts that, if the Commission determines that TNCs are not subject to Pub. Util. Code § 5401, it would adversely impact the development of San Francisco's shared-ride program that began in October 2013.~~72~~77

The Technology Network Engine, CALInnovates, Application Developers Alliance, and Internet Association assert the fare-splitting services are permissible as long as the transportation charges are based on vehicle mileage or time of use.~~73~~78

Christopher Dolan (Dolan) argues that Pub. Util. Code § 5401 was part of a legislative package designed to ensure security and safety for the public, and that the fare-splitting services are subject to its purview.~~74~~79

The Natural Resources Defense Council (NRDC) argues that Pub. Util. Code § 5401 should not be applied to prohibit fare-splitting services offered by the TNCs.~~75~~80 NRDC sees the fare-splitting as increasing the practice of carpooling in a positive way by eliminating the lack of convenience or difficulty in coordinating departure times for different passengers.~~76~~81

2.3.3.2. Discussion

Pub. Util. Code § 5401 provides that: 1) all TCPs must charge on a vehicle mileage or time of use basis or a combination of the two; and 2) no TCP is permitted to charge on an individual-fare basis.~~77~~82

~~71~~76 Comments of SFTWA on the Impact of Pub. Util. Code § 5401 at 5-6.
~~72~~77 Luxor's Comments on the Impact of Pub. Util. Code § 5401 at 2-3.
~~73~~78 Comments of The Technology Network Engine, CALInnovates, Application Developers Alliance, and Internet Association on the Impact of Public Utility Code § 5401 at 4-5.
~~74~~79 Dolan's Comments on the Impact of Pub. Util. Code § 5401 at 3-6.
~~75~~80 Comments of NRDC on the Impact of Pub. Util. Code § 5401 at 2-3.
~~76~~81 *Id.* at 3.
~~77~~82 The exceptions to this individual fare prohibition — neither of which are applicable to our consideration -- are for school buses and for round-trip sightseeing tour services.

We accept the TNCs' representations regarding the facts of how the fare-splitting service operates, and allow this fare-splitting service to continue subject to the certification and reporting requirements discussed herein. We acknowledge that this evolution in the passenger carrier industry is a new means of offering passengers a way to split fares while still paying for the time and distance traveled that was not possible when Pub. Util. Code § 5401 was enacted, and on that basis, the statute lacks clarity and would benefit from modernization. At present however, the facts of how the fare-splitting services operate and the absence of a public policy reason to cease such operations in California leads us to affirm the validity of these operations, subject to the requirements set out below.

This decision is supported by our past interpretations of Pub. Util. Code § 5401. For example, the Commission has found that the purpose of Pub. Util. Code § 5401 is to "protect passenger stage bus operations from competition by bus operators having lesser authority."[~~78~~83] On that basis, the Commission has interpreted Pub. Util. Code § 5401 in several instances to prevent a TCP from engaging in PSC-like operations involving multiple passengers and flat-rate individual fares.[~~79~~84] In addition, this Commission has recognized that persons chartering a vehicle and having the cost divided among the riders is not the equivalent of charging individual fares.[~~80~~85]

2.3.3.2.1. Does 5401 Apply to TNC Fare-Splitting Operations?

[~~78~~83] Decision No. 80448, 1972 Cal. PUC LEXIS 89 at 3.

[~~79~~84] (*See* e.g. Decision No. 8304044, 1983 Cal. PUC LEXIS 222 (1983) (TCP violated § 5401 by transporting individuals from points in downtown San Francisco to the San Francisco International Airport in his van and charging each passenger an individual fare); Decision No. 76147, 1969 Cal. PUC LEXIS 450 (1969) (finding § 5401 violation where each passenger paid the TCP $8 to be transported from a specific hotel to the San Francisco Airport); and Decision No. 77467, 1970 Cal. PUC LEXIS 826 (1970); Decision No. 80725, 1972 Cal. PUC LEXIS 365 (1972) (defendant was charging passengers between $2.00-$2.50 per passenger to travel between the Kern County Airport and downtown Bakersfield).)

[~~80~~85] *See* Decision 81684, 1973 Cal. PUC LEXIS 605 at footnote 10, citing to Decision 70711, (1966) 65 CPUC 545.

We find that 5401 applies to TNC fare-splitting operations. TNCs are a subset of TCPs, and, as such, the Pub. Util. Code § 5401 provisions that apply to TCPs apply to TNCs unless and until the Legislature states otherwise. On the same basis, all TCPs – not just TNCs – are eligible to provide fare-splitting services provided the company complies with the elements of the service set out below.

2.3.3.2.2. Does 5401 Permit TNC Fare-Splitting Operations if the Per-Passenger Ride Charge is Based on Either Vehicle Mileage or Time of Use?

We find that § 5401 permits TNC fare-splitting operations, as long as the TNC does not charge passengers on an individual flat fare basis that does not adjust according to distance or time.[~~81~~86]

The TNCs claim that their fare-splitting services do not run afoul of Pub. Util. Code § 5401 because "individual fare" means a flat rate per person. Rasier-CA argues that because uberPOOL does not charge a flat rate per person and fares are computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof, the service is consistent with Pub. Util. Code § 5401.[~~82~~87] Lyft makes a similar argument regarding its Lyft Line service.[~~83~~88] Once the ride begins, the riders share the common goal of traveling to a similar destination, or destinations along a similar route, and share in the cost. Lyft makes a similar argument regarding the operations of its Lyft Line service.

To ensure that the TNCs offering fare-splitting services are not charging passengers using individual flat fares that do not adjust according to distance or time, we will require the TNCs to submit a report that certifies, under penalty of perjury, the nature

[~~81~~86] The Commission has fined or revoked the licenses of TCPs for violation Pub. Util. Code § 5401's prohibition against charging passengers individual fares. (*See* e.g., ☼ I.96-09-031, 1996 Cal. PUC LEXIS 979 (1996); D.88-03-071, 1988 Cal. PUC LEXIS 189 (1988); Decision 99-01-040, 1999 Cal. PUC LEXIS 38 (1999); Decision No. 78689, 1971 Cal. PUC LEXIS 646 (1971).)

[~~82~~87] Comments of Rasier-CA on the Impact of Pub. Util. Code § 5401 at 5.

[~~83~~88] Comments of Lyft on the Impact of Pub. Util. Code § 5401 at 2.

of their fare-splitting service, and to report regularly to the Commission's staff the structure of the fares charged for each split-fare ride. The first such report shall be submitted within 30 days after this decision is issued.

One year from the date of this decision's issuance, the TNCs shall produce their waybills (in a format determined by SED) that document that the fare for the fare-splitting service was calculated using time and/or distance.

At any time after the issuance of this decision, SED may also request that a TNC with a fare-splitting service perform a demonstration(s) of how the split fare functions.

2.3.3.2.3. What are the Potential Advantages of TNC Fare-Splitting Operations?

As the fare-splitting operations are relatively new, the Commission has not had sufficient time, nor seen enough data, to determine if there are any advantages to allowing the fare-splitting operations to continue. The parties, however, have submitted some anecdotal evidence that suggests that there may be some positive societal benefits to ride-sharing operations.

(a) Reduction in Traffic-Related Injuries

Rasier-CA asserts that fare-splitting operations can reduce drunk driving and related deaths and accidents.

As there is no evidence before the Commission to corroborate Rasier-CA's claim, we instruct each TNC that has a fare-splitting operation to provide, as part of its annual report, evidence of the impact that their fare-splitting operations have had on reducing traffic-related injuries.

(b) Environmental Benefits

Rasier-CA asserts that more passengers taking advantage of uberPOOL means fewer cars on the road, which results in less congestion, less air pollution, and less fossil fuel usage. Rasier-CA then extends the argument by claiming that these reductions are

consistent with the emissions-reduction goals in Assembly Bill 32[~~84~~89] and Senate Bill 375.[~~85~~90]

The Technology Network, *et al*, claim that Lyft Line accounts for more than half of the rides Lyft provided in San Francisco.[~~86~~91]

Again, there is no evidence before the Commission to corroborate this claim. Thus, we instruct each TNC that offers a fare-splitting service to provide, as part of its annual report, evidence of the environmental impact that their fare-splitting operations have had.

2.3.3.2.4. What are the Potential Disadvantages of TNC Fare-Splitting Operations?

Based on the record before us, we do not see any public policy or safety objectives that would be impaired by allowing TNCs to engage in fare-splitting services. The TNCs whose drivers participate in these fare-splitting services must be in compliance with all of the consumer protection and public safety requirements set forth in D.13-09-045 and D.14-11-043, and as modified here, including but not limited to commercial insurance requirements, driver training, and vehicle inspection. Fare-splitting is a service offered by TNCs and as such is subject to the same rules. (*See* D.13-09-045 at 26-30, 73, and Ordering Paragraphs 4, 5, and 7; and D.14-11-043 at 27.)

In order to ascertain the impact of fare-splitting services on public safety and consumer protections, as part of the TNCs' reporting obligations under Reporting Requirement (k) in D.13-09-045, we will additionally require each TNC offering a fare-splitting service to report on complaints, incidents, the cause of each incident, and

[~~84~~89] Global Warming Solutions Act of 2006, which added §§ 38500 *et. seq*. to the Cal. Health & Safety Code.

[~~85~~90] Sustainable Communities and Climate Protection Act of 2008, Senate Bill 375, filed Sept. 30, 2008 amending §§ 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and to add §§ 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend § 21061.3 of, to add § 21159.28 to, and to add Chapter 4.2 (commencing with § 21155) to Division 13 of, the Public Resources Code.

[~~86~~91] *See* Comments of The Technology Network Engine, CALInnovates, Application Developers Alliance, and Internet Association at 5.

the amount paid for compensation to any party in each incident (if the amount is known by the TNC).

2.3.4. Status of Uber

This Commission is still considering whether to require Uber, or any of its subsidiaries, to seek operating authority as a TCP. Uber's July 1, 2015 responses to the Assigned Commissioner and Administrative Law Judge's Ruling has raised a number of additional questions to which we will initiate follow-up inquiries. We will address this question in Phase III of this proceeding.

3. Comments on Proposed Decision

The proposed decision of Commissioner Randolph 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. On February 16, 2016, the San Francisco Taxi Workers Alliance (SFTWA), the San Francisco International Airport (SFIA) and the
San Francisco Municipal Transit Authority (SFMTA), Technet, Rasier, and Lyft filed opening comments. On February 22, 2016, SFTWA, SFIA, SFMTA, Rasier, and Ed Healy filed reply comments.

In reviewing these comments, we find that none of the parties have identified either legal or factual errors. Some of the comments have led the Commission to believe that certain clarifications or modifications are warranted, which we address below.

3.1. Rear-facing trade dress.

SFMTA and SFIA support this requirement but suggest that there be no trade dress on side doors as this may be too confusing. Lyft and Rasier suggest deleting the rear-facing trade dress requirement as it would be difficult for drivers to place/remove the rear-facing placards every time its drivers go on/off duty.

We reject the TNCs' position as we do not believe that the requirement will impose an unreasonable burden on a TNC driver. We believe the requirement can be satisfied by either placing a placard on the inside or outside of the rear window, or by

placing a magnetic attachment to the rear of the vehicle. The revised definition proposed here permits flexibility in designing rear trade dress.

3.2. Leased vehicles.

SFMTA and SFIA claim that the definition of personal vehicle is confusing. They also claim that Uber/Enterprise, Breeze and Hyrecar will lease a car for a week or as little as one day.

~~These comments indicate to the Commission that there is some confusion as to what constitutes a valid lease. To clarify, we cite the two applicable provisions from the Vehicle Code which define the minimum length of time that a lease must be in effect. Vehicle Code § 371 states:~~

> ~~Lessee includes "bailee" and is a person who leases, offers to lease, or is offered the lease of a motor vehicle for a term exceeding four months.~~

~~Vehicle Code § 372 states:~~

Our clarification is set out in Section 2.3.1. above.

> ~~A "lessor" is a person who, for a term exceeding four months, leases or offers for lease, negotiates or attempts to negotiate a lease, or induce any person to lease a motor vehicle; and who receives or expects to receive a commission, money, brokerage fees, profit or any other thing of value from the lessee of said vehicle. "Lessor" includes "bailor" and "lease" includes "bailment."~~

3.3. ~~Taken together, these two provisions make it clear that a lease of a vehicle must be for a term greater than four months.~~Pub. Util. Code § 5401.

SFTWA opposes fare splitting and believes it is prohibited by Pub. Util. Code § 5401. SFTWA claims that some TNCs do charge a flat rate and that even non-flat rates would be a violation of the rule against individual fares.

~~But the~~The TNCs claim that their fare-splitting arrangements are consistent with the time of use and or vehicle mileage requirements provided by Pub. Util. Code § 5401.

While we make no changes to the decision on this issue, we will require that each TNC engaging in a fare-splitting service maintain records that will be subject to

production and review to ~~demonstrative~~demonstrate that the requirements of Pub. Util. Code § 5401 have been met. If a TNC believes that in satisfying this production/review requirement it must disclose information that it claims is proprietary, it shall file a motion for leave to submit the claimed proprietary information under seal.

3.4. Annual mileage limit.

Rasier suggests deleting the 50,000 mile requirement to perform an earlier inspection. Rasier claims that it does not keep track of the mileage on the vehicles in service, and claims that very few cars would go more than 50,000 miles within a year.

We reject Rasier's proposed change. Since vehicles may be used for both personal use and TNC-related transports, it is possible that cars will travel more than 50,000 miles within a year. Each TNC should institute a policy requiring each TNC driver to self-report the total miles driven so that the TNC will be aware when either the calendar year trigger or the mileage trigger has been met.

3.5. SR1 form.

While it is true that California law requires that an SR1 report be filed after an incident, Rasier says that it does not receive a copy of the SR1 form that a driver must send to the DMV. Rasier goes on to say that its insurance company does not get these either.

We will delete this requirement as it appears that as a matter of custom and practice that TNCs do not collect this form. It also appears that some drivers may not fill out SR1s. The SR1 may also be redundant to the incident information that this Commission has required all TNCs to track. We will continue to require each TNC to submit its incident reports as part of the annual reporting required by D.13-09-045.

3.6. Studies on the environment and traffic.

Rasier supports work in this area but feels that it is not ready to produce a study. While a study in this area may be difficult, the TNCs are best situated to answer whether TNCs help or hurt the environment and traffic congestion.

The Commission believes that there is a need to gather more information so that we may determine what impact the TNC operations have on the environment. In light of the comments made, we ~~will modify the~~have modified this decision to have the TNCs provide a plan within 60 days after the issuance of this decision on how each one will study the impacts of TNCs on the environment and traffic.

4. Assignment of Proceeding

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

Findings of Fact

1. TCP and TNC vehicles /drivers' vehicles may be subject to inspection on the basis of their accumulated mileage.
2. Without oversight, TCPs performing their own vehicle inspections may choose to save time and expense by performing inspections that may not be as rigorous and comprehensive as those at licensed facilities.
3. Requiring TCP vehicles to be inspected by licensed third-party facilities reduces the chance that an unfit vehicle will pass inspection, thereby enhancing public safety.
4. The Trustline process referred to in D.97-07-063 utilizes three databases that the general public cannot access: the California Department of Justice's (DOJ) California Criminal History System, the Child Abuse Central Index of California, and the Federal Bureau of Investigation's (FBI) fingerprint records.
5. The DOJ criminal database only captures in-state criminal records, and the latter two databases rely on voluntarily submitted data from state and local agencies.

Conclusions of Law

1. The Commission has the responsibility to protect the safety of the public and consumers of TCP and TNC services. The Commission regulates Charter Party Carriers (TCPs), which includes TNCs, pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, Pub. Util. Code § 5351 et seq.

2. The Governor has approved of the Commission's regulation of TNCs by signing Assembly Bill 2293 (Bonilla), which added Article 7 (TNCs), §§ 5430 through 5443, to the Passenger Charter-Party Carriers' Act.

3. As the state agency authorized to ensure public safety through the enforcement of its regulations, the Commission is the appropriate entity to determine if a regulated utility's new operations are subject to the existing regulatory scheme.

4. The 19-point vehicle inspection checklist that the Commission set forth in D.13-09-045 should apply to all TCP vehicles, except those TCP vehicles already subject to a statutory inspection program.

5. It is in the public interest ~~of public safety~~ to apply the Trustline background check required by D.97-07-063 to carriers that primarily transport unaccompanied minors as a baseline for screening drivers.

6. The electronic insurance certificate-filing requirement of Resolution TL-19105 is intended to streamline the filing process and improve the accuracy of reporting.

7. The $20,000 maximum fine should be maintained for now as the appropriate authority for SED to levy for informal staff citations.

8. The current rules regarding rear-facing trade dress are inadequate to ensure public safety and consumer protection.

9. TNC drivers frequently stop on the side of busy streets to pick up and drop off passengers, often times blocking an entire lane in the process, and often times with passengers entering/exiting on both sides of the vehicle.

10. Without a rear-facing distinctive identifying symbol identifying a vehicle as a provider of TNC services, those sharing the road are not provided any notice of that vehicle's increased likelihood of stopping unexpectedly.

11. A uniform, removable distinctive identifying symbol identifying a vehicle as a TNC, not associated with any individual TNC, will adequately address this public safety issue without stifling innovation.

12. Drivers, motorcyclists, and bicyclists alike will be able to set more accurate expectations of driver behavior and act accordingly if they know they are behind an active TNC vehicle.

13. ~~Regarding clarifications requested in the parties' comments, trade~~ Trade dress may be placed in the front and rear of the TNC vehicles/ drivers' vehicles. The existing trade dress rules do not prohibit use of more than one type of trade dress by a Transportation Network Company.

14. A "personal vehicle," as it applies to a TNC's operations, may include a vehicle that is not registered in the driver's name, or a vehicle obtained pursuant to a lease agreement. The lease agreement must meet the length requirements set in Vehicle Code §§ 371 and 372, *i.e.*, the term of the lease must exceed four months.

15. Pub. Util. Code § 5401 is designed to prevent a TCP from picking up multiple passengers who are not otherwise traveling together, transporting all passengers to a common destination, and then charging each passenger their own fixed fare.

16. TNCs are TCPs, and, as such, the Pub. Util. Code § 5401 provisions that apply to TCPs apply to TNCs.

17. All TCPs, including TNCs, may engage in fare-splitting operations consistent with Pub. Util. Code § ~~5401 provided~~5401, *i.e.*, that the fares are based on either vehicle mileage or time of use, or a combination thereof.

ORDER

1. All Charter Party Carrier (TCP) vehicles, including Transportation Network Companies (TNC), shall be inspected by a facility licensed by the California Bureau of Automotive Repair (a) before the vehicle is first introduced into service as a TCP or TNC vehicle; and (b) every 12 months or 50,000 miles thereafter, whichever occurs first. TCPs and TNCs shall be responsible for ensuring that each of their vehicles/ drivers' vehicles complies with this requirement, and shall maintain records of such compliance for a period of
three years. This requirement shall apply to drivers who are presently driving for TNCs,

and who will become TNC drivers after this decision is issued. Safety and Enforcement Division shall collect data from each TNC on the number of TNC vehicles that have traveled more than 50,000 miles within a year and shall report its findings to the Commission as part of its annual report.

2. Pursuant to ~~Public Utilities~~Pub. Util. Code § 5389, Charter Party Carriers (TCPs), including Transportation Network Companies (TNC) shall maintain records for a period of three years demonstrating that all TCP vehicles and TNC vehicles/drivers' vehicles were inspected by a facility, licensed by the California Bureau of Automotive Repair, at the appropriate 12-month or 50,000-mile mark, and shall make such records available for inspection by the Commission.

3. Pursuant to Pub. Util. Code § 5389, Charter Party Carriers (TCPs), including Transportation Network Companies (TNCs), shall maintain records demonstrating that the 19-point checklist required by Decision 13-09-045 was followed and the TNC and TCP vehicles passed inspection. TCPs, including TNCs, shall make such records available for inspection by or production to the Commission depending on the Commission's preference.

4. Pursuant to Pub. Util. Code § 5389, Safety and Enforcement Division may make unscheduled visits to inspect Transportation Network Company (TNC) records, including proof of commercial liability insurance providing not less than $1,000,000 per-incident coverage, criminal background check information, TNC driver's license and driving record, vehicle inspection records, driver suspensions, deactivations, and subsequent reactivations.

5. Transportation Network Companies shall provide notice to their drivers that the driver's consent is not needed for the disclosure of their information to the Commission.

6. All Carriers, including Transportation Network Companies, that primarily transport unaccompanied minors must comply, at a minimum, with the background check requirements articulated by this Commission in Decision 97-07-063. In order to provide further guidance, the assigned Commissioner

will issue an Assigned Commissioner's Ruling that places some parameters on the term "primarily."

7. Transportation Network Companies shall be required to file certificates of insurance pursuant to General Order-115 and Resolution TL-19105.

8. Transportation Network Companies shall not be required to collect SR1 forms.

9. Transportation Network Company (TNC) vehicles/ drivers' vehicles shall display consistent trade dress in the front and the rear of the vehicle (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 at least 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, or placed in the front and rear windshields. Magnetic or removable trade dress is acceptable. TNCs shall file a photograph of their trade dress with the Safety and Enforcement Division.

10. No matter what personal vehicle arrangement a Transportation Network Company (TNC) driver chooses, each TNC must ensure that the personal vehicle used by their drivers complies with all applicable regulations before placing a vehicle into service, including, but not limited to ~~the~~, driver training, meeting insurance requirements ~~and~~, a 19-point vehicle inspection performed at a California Bureau of Automotive Repair-licensed facility, and trade dress rules.

11. If a personal vehicle ~~that~~ is leased by a Transportation Network Company (TNC) driver, the term of the lease shall be greater than four months, as required by Vehicle Code §§ 371 and 372. Lease or rental agreements with a term of less than four months are not permitted as a form of personal vehicle ownership for TNC drivers.

12. The Commission ~~declines to require fingerprints for all Transportation Network Company (TNC) drivers at this time, unless the TNC driver is transporting unaccompanied minors, in which case the Trustline process must be followed.~~ will issue

a separate ruling posing questions about background checks and establishing the identity of drivers through methods such as fingerprinting for part comment.

13. Every Transportation Network Company (TNC) engaged in a fare-splitting operation shall certify, under penalty of perjury, the nature of their operations, and shall certify that the fares are calculated in conformity with Pub. Util Code § ~~5401~~5401. This certification shall be submitted to the Commission's Safety and Enforcement Division within 30 days after this decision is issued. To the extent necessary to substantiate their positions, TNCs may file a motion for leave to submit information regarding the calculation of the fare-split under seal.

14. One year from the date of this decision's issuance, each Transportation Network Company engaged in a fare-splitting operation shall produce their waybills (either hard copies or in an electronic format, and in an amount as determined by Safety Enforcement Division) that document that the fares for the ride-sharing operations were calculated on either a vehicle mileage or a time of use basis, or a combination thereof. At any time after the issuance of this decision, the Commission's Safety and Enforcement Division may also request — and the Transportation Network Companies (TNC) shall comply with the request — that Rasier-CA, Lyft, Sidecar, and any other TNC with a fare-splitting service, perform a demonstration on how the fares are calculated.

~~15. At any time after the issuance of this decision, the Commission's Safety and Enforcement Division may also request — and the Transportation Network Companies (TNC) shall comply with the request -- that Rasier-CA, Lyft, Sidecar, and any other TNC with a fare-splitting service, perform a demonstration on how the fares are calculated.~~

15. ~~16.~~ Within 60 days from the issuance of this decision, each Transportation Network Company that has a fare-splitting service shall provide a plan (including, at a minimum, the scope, timeline, and specific research questions) to Safety and Enforcement Division (SED) on how it will study the impact that their fare-splitting

services have had on reducing traffic-related injuries. SED shall have the authority to conduct follow up inquiries on the plan to the extent it deems necessary.

16. ~~17.~~ Within 60 days from the issuance of this decision, each Transportation Network Company that has a fare-splitting service shall provide a plan (including, at a minimum, the scope, timeline, and specific research questions) to Safety and Enforcement Division on how it will study how such services have impacted the environment. SED shall have the authority to conduct follow up inquiries on the plan to the extent it deems necessary.

17. ~~18.~~ Within 60 days from the issuance of this decision, each Transportation Network Company (TNC) shall provide a plan (including, at a minimum, the scope, timeline, and specific research questions) to Safety and Enforcement Division on how it will study the impacts of TNC vehicles on traffic congestion and vehicle-miles traveled. SED shall have the authority to conduct follow up inquiries on the plan to the extent it deems necessary.

18. Unless a time is already specified in an ordering paragraph, the time for compliance with the rules provided in this decision shall begin 60 days after this decision is issued.

19. The question of Uber Technologies, Inc.'s possible status as a Charter Party Carrier shall be addressed in Phase III of this proceeding.

20. The decision orders a Phase III in this proceeding.

21. Rulemaking 12-12-011 remains open.

Dated _____, 2016, at San Francisco, California.

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