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These comments are submitted on behalf of the San Francisco International Airport (“SFO”) and the San Francisco Municipal Transportation Agency (“SFMTA”), collectively, “the City.” . The City recognizes that the safety of the public is paramount, and it wholeheartedly supports the CPUC’s efforts to ensure that its rules and regulations for TNCs are sufficient to protect the public. We are encouraged that the CPUC has elected to revisit various aspects of Decision 13-09-045, its initial Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry,” (hereafter “the Decision” or “Decision 13-09-045”). The City’s comments address the five issues presented in the Proposed Modification to the Decision, dated March 25, 2014, in the order in which they appear in the Proposed Modification, followed by several other issues regarding TNC service that the City urges the CPUC to address.

1. Adding a Definition of “Providing TNC Services”

The Decision requires that TNCs maintain commercial liability insurance in the amount of \$1,000,000 “for incidents involving vehicles and drivers while they are providing TNC services.” (Decision, p. 25.) The Proposed Modification suggests that the term “providing TNC services” be defined to include periods during which the TNC app is open and exclude periods during which the app is closed. (Proposed Modification, p.2.) The City strongly supports the CPUC’s efforts to close this gap in current TNC insurance coverage -- the California Department of Insurance (“CDI”) calls this gap the “app on, no match” period¹ -- and the City agrees that it is incumbent upon the CPUC to craft a clear industrywide insurance mandate applicable to all TNCs. The City questions, however, whether the language suggested in the Proposed Modification is sufficient to do so.

The City notes that at least five TNCs have applied for operating permits with the Commission: (1) UberX, (2) Lyft, (3) InstantCab (aka “Summon”), (4) Tickengo (aka “Wingz”), and (5) Sidecar. While we believe that many of these TNCs use similar technology to facilitate their transportation services, the business models are not identical. Some TNCs do not require use of an app. For example, Wingz historically had customers reserve rides by way of an email reservation system hours or days in advance of the ride. It is also possible that TNCs do not share identical protocols with respect to when their apps are considered “open” and when they are deemed to be “closed.”

With these variations in mind, and understanding that TNCs may refine their technology further in ways that are not foreseeable, the City proposes that the CPUC craft a broad definition of

¹ See March 25, 2014 letter from CDI to CPUC’s Director of Policy & Planning Division. That letter is attached hereto as Exhibit A.

“providing TNC services” that will include all times during which a TNC driver is actively providing TNC services or available to provide TNC services, specifically those periods in which a driver is: (1) en route to pick up a TNC passenger, (2) transporting a TNC passenger, (3) picking up a TNC passenger, (4) dropping off a TNC passenger, or (5) situated in the TNC vehicle while the app is open or the driver is otherwise available to accept rides from a subscribing TNC passenger. Whether the TNC driver’s app is “open” or “closed” should not alone be determinative for purposes of establishing that a TNC driver is “providing TNC services.”

2. Changing the Language of Decision 13-09-045’s Insurance Requirement

The Proposed Modification suggests changing the language of the TNC commercial liability insurance requirement in several ways, including adding a requirement that the policy be issued by a company that is licensed to write insurance in the state or is a nonadmitted insurer subject to California Insurance Code Section 1673. The City supports this change to the language, but we note that the new, recommended language (Proposed Modification, pp. 2-3) drops the reference to the term “incidents involving vehicles and drivers while they are providing TNC services,” and replaces it with the term “incidents involving TNC vehicles used as a public livery or conveyance.” This proposed modification to the language of the Decision (*see, e.g.,* Decision at pp. 25, 57, 67 and 71), would add further confusion to the question of when TNC insurance applies to incidents involving TNC vehicles and drivers. If the CPUC modifies the Decision to define the phrase “providing TNC services,” that phrase should remain a part of the Decision’s insurance requirement.

3. Requiring Additional Types of Insurance

The Proposed Modification asks whether, in addition to requiring \$1 million in commercial liability insurance, it should require all TNCs to provide \$1 million in uninsured/underinsured motorist coverage, comprehensive and collision coverage in the amount of \$50,000, and medical payments coverage in the amount of \$5,000. With the caveat that the comprehensive and collision insurance be in the amount of \$50,000 per person and \$100,000 per accident as recommended by the CDI (*see* Exhibit A) the City strongly supports these additional requirements.

4. Application of Modified Decision to Uber

In its Decision the CPUC concluded that Uber, as opposed to UberX, is not a TNC. (Decision, p. 24.) Although the CPUC imposed the \$1 million commercial liability policy requirement on Uber, it left other issues, including Uber’s potential TCP status, to Phase II of this rulemaking proceeding. To be consistent with that approach, the City recommends that the CPUC immediately apply to Uber’s

operations any new definition relating to the \$1 million commercial liability insurance requirement, including any definition of the term “providing TNC services.” As to new insurance requirements such as the proposed uninsured/underinsured motorist and collision and comprehensive coverages, the City recommends that the CPUC give further consideration to those issues in Phase II when it updates its existing public safety rules applicable to TCPs and other charter-party carriers.

5. Reporting *Ex Parte* Communications

The City is fully supportive of the assigned Commissioner’s proposal to make Rule 8.4 of the its Rules of Practice and Procedure applicable to this Rulemaking R.12-12-011, including Phase II of this proceeding and any further workshops, hearings or other aspects of the proceeding, and of the assigned Commissioner’s proposal to apply Rule 8.4’s reporting requirements to any communications between “interested persons” and the CPUC’s Policy and Planning Division.

6. The CPUC Should Adopt Additional Modifications to TNC Insurance Requirements

A. Require that the Insurance be Primary

In Decision 13-09-045 the CPUC rejected the recommendation of the CDI that the \$1,000,000 million insurance policy that each TNC must provide be a **primary** commercial insurance policy.² Instead, it required that the policy “drop down and pay first dollar for any claim not covered by the TNC driver’s policy.” (See CDI Background White Paper, p. 1.)³ As the CDI noted in its September 9, 2013 letter to the CPUC, given the express “for hire” coverage exclusions typical of most personal auto liability policies, a driver’s personal insurance company is likely to deny coverage when an accident occurs while the driver is providing TNC services. Thus, as the CDI noted at page 2 of its September 9 letter, if the TNC policy is not primary, it provides less protection to TNC passengers, other motorists and their passengers, and bystanders.

The downside to such coverage is that it imposes a burden on the injured consumer to potentially pursue two sources of insurance and could result in confusion to the consumer with respect to whether the driver’s personal coverage or the TNC’s excess coverage would be required to respond to the claims. This would be particularly difficult for claimants without an attorney.

² See Letter of September 9, 2013 from CDI to CPUC’s Director of Policy & Planning Division, pp. 1-2. That letter is attached hereto as Exhibit B.

³ See CDI Background White Paper, p. 1. The Background White Paper was prepared in advance of CDI’s March 21, 2014 hearing regarding TNC insurance coverage and is attached hereto as Exhibit C.

The City urges the CPUC to accept the CDI's recommendation that TNC insurance be primary because anything short of a primary commercial liability policy puts the public at risk.

B. Make the TNC Insurance Policies Available to the Public

The City, and other parties, have argued throughout this proceeding that the CPUC should treat the insurance policies maintained by TNCs as public records rather than allowing them to be filed under seal. In Decision 13-09-045 the CPUC indicated that it would wait until Phase II of this proceeding, which we understand has not yet been scheduled, to consider whether policies for both TCP and TNC certificate holders should be made available on the CPUC's website. (Decision, p. 58.) The City urges the CPUC to consider that issue now rather than later. The untested nature of the TNCs' insurance policies, the legitimate concerns raised by the CDI and others about gaps in insurance coverage, and a deadly accident in San Francisco involving a TNC driver, raise serious questions about an issue of great public concern – whether these policies will actually protect the public. Under the California Public Records Act, the TNC insurance policies, or relevant parts thereof, should be disclosed to the public unless the TNCs can demonstrate that they are legitimate trade secrets. (*See* Cal. Evid. Code § 1060; Cal. Gov't Code § 6254(k); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 206-07.)

If the CPUC declines to address the issue of disclosure until Phase II of this proceeding, the City recommends that the CPUC follow the recommendation of the CDI and provide further guidance to TNCs and more information to the public about the required terms of the TNC policies. In its September 9 letter to the CPUC (see Exhibit B, p. 2), the CDI recommends that the Decision “should prescribe the amounts of deductibles and self insurance limits, and these should be made public.”

C. Ensure that Personal Insurance Providers are Advised of TNC Activities of Their Insureds

Decision 13-09-045 requires TNCS to obtain proof that a driver has personal automobile coverage before allowing the driver to provide transportation service using its app. (Decision, p. 30.) The CPUC heard testimony during this proceeding, and the CDI has confirmed (see Exhibit C, pp. 4-5), that many personal automobile insurance policies exclude from coverage incidents that occur while the vehicle is being operated on a for-hire basis. In consequence, we have noted reports in the press and on social media sites that some TNC drivers do not disclose, or may even attempt to hide the fact that they are involved in TNC activities. A representative of the San Francisco District Attorney's

Office testified at the CDI's March 21, 2014 investigative hearing on TNC insurance coverage⁴ that his office is seeing instances of such conduct that amount to insurance fraud. To combat this fraud, he suggested that TNC drivers be required to obtain their personal insurers' acknowledgement that the vehicle will be used to provide TNC services. In addition to the possibility of insurance fraud, failure to require an acknowledgement threatens the public safety. Members of the public need to know that the insurance protection that they are promised when they accept TNC transportation services, which includes the coverage provided by the driver's personal automobile liability policy, is not illusory. Therefore, the City urges the CPUC to require that the proof of insurance that drivers must provide to the TNC include the insurer's acknowledgement that the insured has advised the insurer that he or she intends to use the personal vehicle to provide TNC services.

7. The CPUC Should Notify the Public of its Efforts to Enforce TNC Requirements

Upon review of the CPUC's website, the City understands that the CPUC has received five applications for TNC licenses, but has issued only two licenses thus far – to the company doing business as Summon and the company doing business as Wingz. The CPUC issued “second deficiency” notices to Lyft, UberX and SideCar in connection with their pending applications for TNC licenses on March 6, 2014, citing various deficiencies. We presume that Uber, UberX, Lyft, and SideCar are currently providing transportation services for hire under the authority of interim agreements with the CPUC's Safety and Enforcement Division. (Uber and Lyft executed the agreements in January 2013 and SideCar in May 2013.) By their terms, these agreements expire upon issuance of a final decision in Rulemaking R.12-12-011, and may be extended for an additional 60 days if the CPUC determines that the companies require charter-party authority to operate, and the companies immediately apply for such authority. The City seeks clarification from the CPUC regarding when Decision 13-09-045 will be considered final (e.g., when the CPUC issues a decision on the pending motions for rehearing, or when it issues a decision in Phase II of the proceeding), and how long Uber, UberX, SideCar and Lyft will be permitted by the CPUC to operate without valid TNC licenses.

The City also asks the CPUC to make public its plans, and its efforts thus far, to enforce its requirements for TNC certificate holders outlined in Section 2.2.4 of Decision 13-09-045. (Decision, pp. 25-33.) The City and other parties argued during this rulemaking proceeding that the

⁴An audio recording of that hearing – “Insurance and Transportation Network Companies: solving the insurance challenges so passengers, drivers, pedestrians and property owners are adequately protected” --is available at: <http://www.insurance.ca.gov/video/0030VideoHearings/tnc.cfm>.

CPUC's Proposed Decision did not provide for direct CPUC regulation and enforcement of safety standards, but instead left the regulated entities responsible for their own compliance. For example, the CPUC requires that a TNC vehicle pass a 19-point inspection before it is authorized by the TNC to provide TNC service, and that the vehicle be inspected annually thereafter. But the CPUC allows the TNCs themselves, rather than a licensed third-party, to conduct these inspections. (Decision, p. 28.) Likewise, while Decision 13-09-045 requires initial and annual reports from TNCs on various matters -- drivers' completion of training course, hours/miles logged by drivers, driver discipline, service by zip code, and availability of accessible vehicles -- it does not require TNCs to verify that they have inspected all TNC vehicles, run criminal background checks on all drivers, or obtained each driver's driving record. While the City understands that the CPUC has the authority to inspect TNC records and vehicles, conduct investigations, and issue fines and other penalties to charter-party carriers (see Decision, pp. 33-34), the City seeks assurance from the CPUC that it intends to engage in an active enforcement effort that includes monitoring TNC compliance with CPUC safety regulations, as opposed to simply responding to complaints from the public. (See Pub. Util. Code § 5371.5.)

8. The CPUC Should Define the Term "Personal Vehicle"

Decision 13-09-945 defines a TNC as "an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles." (Decision, pp. 23-24.) The Decision goes on to explain that the main distinction between a TCP and a TNC is use of a personal vehicle rather than a vehicle, like a limousine, "purchased primarily for a commercial purpose." (*Id.*) The Decision provides no definition of the term "personal vehicle," nor does it require a TNC to verify that a current or potential driver is using his or her personal vehicle to provide TNC services. The CPUC should remedy this oversight.

On March 31, 2014 the San Francisco Examiner reported on a San Francisco-based startup, Breeze, dedicated to providing rental cars to potential TNC drivers expressly for the purpose of allowing those drivers to drive for TNCs.⁵ The company founders state that these vehicles could be shared by two or more TNC drivers and operate on a 24/7 basis, and they apparently encourage drivers to provide services for multiple TNCs simultaneously. While the Breeze founders are quoted as

⁵ The March 31, 2014 S.F. Examiner article is attached hereto as Exhibit D.

EXHIBIT A

DEPARTMENT OF INSURANCE

EXECUTIVE OFFICE
300 CAPITOL MALL, SUITE 1700
SACRAMENTO, CA 95814
(916) 492-3500
(916) 445-5280 (FAX)
www.insurance.ca.gov



March 25, 2014

Marzia Zafar
Director, Policy and Planning Division
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94102

RE: Rulemaking 12-12-011

Dear Ms. Zafar:

The California Department of Insurance held an investigatory hearing on March 21, 2014, relating to insurance issues and Transportation Network Companies. The full agenda and the audio are available on the web at www.insurance.ca.gov.

We have the following initial recommendations:

- The CPUC should refine the definition of "when providing TNC services" to cover the "app on, no match" period and require the \$1 million commercial liability policy to apply during this period. There appears to be a significant insurance gap for drivers, pedestrians and third parties that are involved in an accident with TNC-related vehicles during this period.
- TNCs should also be required to carry a minimum of \$1 million UM/UIM and a minimum of \$50,000/\$100,000 comprehensive and collision, if the driver has purchased this coverage on his or her own policy. Drivers who use their personal vehicles for a TNC purpose run a strong possibility of having claims denied by their personal automobile insurance company because the driver used the car for a commercial or livery purpose.

The recommendations above are initial recommendations. The Department of Insurance is continuing to review the testimony and documents provided at our hearing, and may have further recommendations in the near future.

Please contact Deputy Commissioner Chris Shultz at (916) 492-3589 with any questions regarding these recommendations.

Sincerely,

A handwritten signature in black ink that reads "Dave Jones".

DAVE JONES
Insurance Commissioner

DEPARTMENT OF INSURANCE

Legal Division, Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105



Jennifer McCune
Attorney
TEL: 415-538-4148
FAX: 415-904-5490
E-Mail: mccunej@insurance.ca.gov
www.insurance.ca.gov

September 9, 2013

Via Email

Marzia Zafar
Director, Policy & Planning Division
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, California, 94102

Rulemaking 12-12-011

Dear Ms. Zafar:

The California Department of Insurance (CDI) has been tracking Rulemaking 12-12-011 regarding Transportation Network Companies (TNCs). It has come to our attention that there is some confusion about the different options available for TNC insurance. This letter, prepared on short notice, represents a good faith effort to assist the California Public Utilities Commission (CPUC) in making sure that there is insurance protection in effect for drivers, passengers, and property owners in the event a TNC driver is involved in an accident.

Issue No. 1 – Insurance Requirements

There appears to be a question of whether TNCs should be required to maintain primary or excess coverage.

CDI is first and foremost concerned with consumer protection. The CPUC can achieve maximum consumer protection by requiring TNCs to maintain primary commercial insurance. Primary insurance will provide the maximum protection because excess insurance normally does not “drop down” and provide coverage until after the underlying insurance is exhausted. In this case, the underlying insurance – the TNC drivers’ personal auto insurance – generally excludes coverage for “liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.” This same exclusion provides that it “does not apply to a share-the-expense car pool.” We believe that this type of exclusion precludes coverage for a TNC driver under a standard personal auto policy when passengers are making a payment that is in excess of expense sharing.

Based on informal conversations with TNCs and auto insurers, we understand that personal lines auto insurers have both paid claims and denied claims when drivers with personal lines insurance were transporting a passenger referred by a TNC. This creates confusion and uncertainty in the claims handling process. If the CPUC requires TNCs to maintain \$1 million per incident primary commercial liability coverage, it will alleviate this uncertainty.

While it would provide less protection for consumers, a second option would address the concerns that requiring TNCs to provide this type of primary insurance may be costly and could be restrictive on the newly emerging TNC industry. The second option would be to require TNCs to maintain excess commercial liability insurance that drops down to provide first dollar primary insurance if the driver's policy does not provide coverage, or the primary insurer for any reason fails to, or is unable to, make payment. This alternative might allow for the emergence of new types of insurance policies to address the TNC model. The important thing would be to ensure that the "drop down" language that makes the coverage primary is drafted so that the coverage required by the CPUC responds as primary if no other coverage is available. This model would provide flexibility for the market while maintaining first dollar protection for the consumer. The downside to such coverage is that it imposes a burden on the injured consumer to potentially pursue two sources of insurance and could result in confusion to the consumer with respect to whether the driver's personal coverage or the TNCs' excess coverage would be required to respond to the claim. This would be particularly difficult for claimants without an attorney.

Issue No. 2 - Equivalent transparency

CDI encourages the CPUC to ensure that TNC policies have a similar level of transparency as the policies required of other vehicles that transport people for a charge. The decision should prescribe the amounts of deductibles and self insurance limits, and these should be made public.

Issue No. 3 - Exculpatory language in terms and conditions

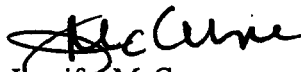
Many of the TNCs have Terms of Service that provide that the TNC is not liable for any loss, damage or injury. Yet the Proposed Decision mandates certain duties regarding safety to the TNCs. A disclaimer of liability in the TNCs Terms of Service could mislead a consumer into thinking that they do not have recourse against a TNC, when in fact the TNC will be required to maintain \$1,000,000 (one million dollars) in coverage. The CPUC should prohibit waivers that will prevent consumers from having recourse to the insurance.

Marzia Zafar
Director, Policy & Planning Division
California Public Utilities Commission
September 9, 2013
Page 3

Conclusion

CDI commends the CPUC for its efforts in sorting through the issues involved in regulation of these new and quickly evolving Transportation Network Companies. If you have any additional questions, please contact me at 415 538-4148.

Sincerely,



Jennifer McCune
Attorney

EXHIBIT C

**California Department of Insurance
Investigatory Hearing
Background White Paper (Updated 4-1-14)**

**Insurance and Transportation Network Companies:
Solving the insurance challenges so passengers, drivers,
pedestrians and property owners are adequately protected**

**Friday, March 21, 1-3pm
State Capitol, Room 112, Sacramento**

Purpose of Hearing

The California Department of Insurance (CDI) has called this informational hearing for two purposes:

- To help inform any recommendations CDI may make to the California Public Utilities Commission (CPUC) or to the Legislature regarding insurance related to Transportation Network Companies (TNCs);
- To better understand how insurance companies are handling drivers using their personal vehicles for a TNC use, and whether insurers might offer a market-based solution to the real or perceived gaps that have been identified.

The purpose of the March 21st hearing is to discuss the insurance issues related to TNCs. Competitive concerns between TNCs and other transportation models are not within CDI's jurisdiction and will not be part of the conversation.

CDI's concern is that drivers, passengers, pedestrians and third parties are covered in the event of injury or damage.

Background

In a September 23, 2013 Decision ("Decision"), the California Public Utilities Commission (CPUC) established a new transportation business model called Transportation Network Companies (TNCs.) The CPUC defined TNCs as an "organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." (Decision, p. 2)

CDI identified the potential insurance gaps and called on the CPUC to ensure that consumers (drivers, passengers, pedestrians and third parties) had access to insurance limits equivalent to the limits required of taxis or charter party carriers. CDI also recommended that TNC companies not be allowed to use language in their Terms and Conditions that might lead a consumer to think they had no recourse against the TNC, when in fact the TNC was required to carry not less than \$1,000,000 (one million dollars) per-incident liability coverage.

In its Decision, the CPUC "require[d] TNCs to maintain commercial liability insurance policies providing not less than \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing TNC services. The insurance coverage shall be

available to cover claims regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim.” (Decision, p. 30)

CDI recommended that the CPUC require TNCs to maintain primary commercial insurance. Although the CPUC did not use the word “primary,” it did require the TNCs to cover claims regardless of whether the TNC driver maintains insurance adequate to cover any portion of the claim. Accordingly, the CPUC requires the TNCs’ insurance to drop down and pay first dollar for any claim not covered by the TNC driver’s policy.

Coverage Gaps

In a January 2014 letter CDI advised the CPUC of gaps in TNC insurance requirements caused by the fact that, while TNCs are required to maintain \$1 million in liability coverage, TNCs are not required to maintain: 1) medical payments coverage; 2) comprehensive coverage; 3) collision coverage; or 4) uninsured or underinsured motorist (UM/UIM) coverage. Drivers who purchased those coverages on their personal automobile insurance policy may be surprised to find that because they used their personal vehicle “for hire” or for “livery purposes,” the “for hire/livery” exclusion in their personal auto policy may apply and leave them without coverage for medical payments, comp/collision, or UM/UIM.

CDI suggested that the CPUC consider whether TNCs should be required to maintain some or all of the aforementioned coverages. CDI also suggested that the CPUC consider defining the phrase “while providing TNC services” to prevent coverage disputes over when TNC services start and stop and to clarify which insurance is in effect at the time of an accident.

CDI followed up with a public notice to TNC drivers citing the potential gaps in insurance coverage for TNC drivers. To view the notice, please visit CDI’s website at <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/TransNetwkDrvrs.cfm>

Lyft & Uber voluntarily close some coverage gaps

In February, TNCs Lyft and Uber announced that they expanded their coverage by purchasing UM/UIM and collision coverage. Purchasing these additional coverages filled part of the gap CDI identified. Specifically, UM/UIM will provide coverage to passengers and drivers injured by an uninsured or underinsured driver. Collision will provide coverage for damage to the TNC driver’s car.¹ With regard to the medical payments coverage, although neither Lyft nor Uber purchased that coverage the potential gap caused by lack of medical payments coverage is reduced by liability and UM/UIM coverages. The gap is further reduced by any health coverage in effect for the driver or passenger who is injured as well as medical payments coverage the passenger may have in place on their own personal auto policy.

While voluntary purchase of UM/UIM and collision coverage is a positive step, problems remain.

¹ We understand that Uber has a \$1,000 deductible for its collision coverage and that Lyft’s collision coverage does not apply unless the Lyft driver purchased collision coverage on his or her own policy.

Remaining coverage gaps and issues

First, as of March 18, 2014, Lyft and Uber are the only TNCs that have purchased additional coverage. Drivers for other TNCs still face the coverage gaps identified in CDI's January 10, 2014 letter to the CPUC.²

Second, though certain TNCs have purchased UM/UIM and collision coverage, there is no current legal requirement that these TNCs retain the coverage or that other TNCs purchase coverage.

Third, uncertainty regarding when a TNC driver is "providing TNC services" still exists along with potential coverage disputes regarding when a TNC's \$1million liability policy is triggered. Some TNCs have, in the past, taken the position that drivers are not "providing TNC services" until the driver accepts a match. At a minimum, this creates potential coverage disputes over whether a TNC's commercial policy or the TNC driver's personal auto policy must pay. It also creates the possibility, albeit small, that neither policy will be on the risk leaving accident victims to seek damages solely from the driver's own financial assets.

When does personal automobile insurance stop and TNC insurance begin?

There are three distinct time periods involved with TNC applications ("Apps"):

PERIOD 1	App Open → Waiting for Match
PERIOD 2	Match Accepted → Passenger Pick-Up
PERIOD 3	Passenger in the Car

The CPUC might clarify and perhaps change when the \$1 million TNC policy comes into play. The CPUC Decision currently provides that the TNC coverage applies when TNC drivers "are providing TNC services." The CPUC advises that the following section of its Decision clarifies that TNC services begin when a driver accepts a Match:

"TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences." (Decision, p. 30)

However, as set forth above, some TNCs have taken the position that drivers are not "providing TNC services" until the driver picks up a passenger. Recently, it appears that some TNCs may be changing their position. We understand, but have not confirmed, that Uber very recently

² We have been informed that Sidecar is in the process of purchasing similar insurance.

purchased additional insurance to cover all three time periods. While this is a step in the right direction, problems remain.

First, Uber announced it purchased liability limits of 50/100/25, for Period 1, which is lower than the \$1 million liability limits currently required by the CPUC for Periods 2 and 3. And it is unclear whether Uber takes the position that these lower limits or the CPUC's \$1 million liability limit requirements apply to Period 2. Second, Uber is currently the only TNC that announced the purchase of additional insurance to cover all three time periods and this coverage is still voluntary. It appears that some TNCs still take the position that the driver's personal auto policy should cover Period 1 and the TNCs' commercial policy should cover Periods 2 and 3. If TNCs are not required to provide coverage until Period 2, coverage disputes may occur over whether the driver's personal auto policy or the TNCs' commercial policy provides coverage for Period 1 - "App Open → Waiting for Match".

Livery exclusions and the three periods related to TNC use

Related to the above issue is how the livery exclusion applies in relation to the three time periods of TNC use. The challenge in this area is that the livery exclusion is in contract language, not statute, and California has nearly 100 auto insurers. CDI sets forth samples of the livery exclusions of some of the largest personal auto insurers below:

Sample No. 1:

We will not pay for those damages which an insured person is legally obligated to pay because of:

1. bodily injury or property damage arising out of the use of your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public. This exclusion does not apply to shared-expense car pools or when the three following conditions are met:
 - a. you are operating an auto as a volunteer service for a nonprofit charitable organization or a governmental agency; and
 - b. you are transporting physically or mentally handicapped persons or persons 60 years of age or older; and
 - c. you do not receive more than the amount allowed for by law for reimbursement of actual miles driven.

Sample No. 2:

1. We will not cover bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

Sample No. 3:

Under Part I, this policy does not apply to liability for, nor will we provide or pay for a defense of a lawsuit for:

1. bodily injury or property damage arising from the use of any automobile while carrying persons for a charge, but this exclusion does not apply to you while occupying an additional insured automobile as a passenger or to shared-expense car pools.

Sample No. 4:

What is Not Covered: ...bodily injury or property damage arising out of the ownership, maintenance or operation of any vehicle while it is being used to carry persons or property for

compensation or a fee, including but not limited to the pickup or delivery or return from a pickup or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.

Sample No. 5:

What is Not Covered: ... damages arising out of the ownership, maintenance, or use of a vehicle while it is being used to carry persons for a charge. This exclusion does not apply to the use of a private passenger car on a share-the-expense basis.

Sample No. 6

Section I – Liability – Exclusion

Section I does not apply to any vehicle used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Section II – Medical Payments – Exclusion

There is no coverage for bodily injury sustained by any occupant of an owned auto used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Section III – Physical Damage – Exclusion

An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Because of the varying language in the above “livery and driving for hire exclusions,” some drivers would be covered and other might not be covered if TNCs are not required to provide insurance during Period 1. For example, one major insurer’s exclusion provides it will not cover damage or injury “arising out of the use of your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public.” That could exclude coverage during all three periods.

Another insurer’s exclusion applies “while used to carry persons or property for a charge.” That might imply that Period 1 is covered while Periods 2 and 3 are not.

TNCs have asserted that it is “extremely rare for personal policies to deny coverage.” Personal auto insurers likely disagree. As seen above, it depends on the policy language, which does not provide any consistency. Moreover, whether a personal auto policy insurer agrees to provide coverage may depend on the amount of the personal auto policy liability limits vs. the amount of claimed liability. For example, if a driver has a 15/30/5 policy, an insurer may make a business decision to simply pay \$30,000 policy limits rather than litigate the issue that personal auto insurance was not in effect because the driver was using the vehicle for livery purposes.

Livery exclusions and ridesharing

“Ridesharing” means two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit.” (Cal. Veh. Code 522.)

The livery exclusions discussed above appear to except ridesharing from the exclusions. In other words, personal auto policies generally provide coverage for ridesharing a/k/a carpooling. Thus,

- Drivers could purchase commercial coverage that would provide coverage 24/7/365.

Creation of new coverage options

- Legislature could require TNCs to buy additional insurance. Legislature could define “while providing TNC services” in order to deal with the lack of coverage for Period 1 (“App Open → Waiting for Match”) and avoid lengthy coverage disputes. Legislature could enact a statute like AB 1871 (Jones 2010), related to personal vehicle sharing, which holds harmless owner’s personal auto insurer for losses that occur when the vehicle is being use in a car-sharing program. However, issue of driver’s gross negligence must be considered in the TNC context where the car is being driven by owner.
- An insurer could issue commercial coverage to the TNC providing liability coverage and other auto coverages (UM/UIM, comprehensive and collision, medical payments) that applies to any auto (a) while engaged in a TNC activity (including “logged in and trolling for fares”) or (b) full time coverage. The coverage would apply to a schedule of vehicles provided by the TNC which includes all registered drivers. The premium could be pro-rated and billed monthly to the TNC for each vehicle listed based upon the amount of time logged in as doing TNC activity as reported by the TNC also on a monthly basis. Each TNC driver is issued a certificate of coverage identifying the policy number, insurer contact information, limits etc. that apply while the driver is engaged in TNC activity. Drivers could hypothetically pay the TNC for their pro-rata share of the insurance coverage. This concept could have the drivers still purchasing personal auto for their personal use, and this split coverage would need to be discussed with the personal lines auto insurers.
- Personal lines insurers could file for a “Type of Use” new optional rating factor [CCR 2632.5(d)(3)] plus an endorsement, offered to all good drivers, that removed the livery exclusion, classified the car as TNC, and then file a new class plan for that exposure. If the loss experience of all the TNC classification was tracked separately, there would be an equitable rate for the TNC drivers separate from other drivers. Challenges to this approach include: (1) CIC 660(a)(1) specifically carves out livery from the definition of personal auto; (2) a mechanism for documenting personal/TNC miles may be needed, and (3) putting occasional TNC drivers in the same pool with frequent TNC drivers may make the endorsement cost-prohibitive for occasional drivers.
- A commercial insurer could make a Rule filing to the company’s already established commercial auto program to provide an endorsement/rates/rule for coverage for TNC drivers.
- A commercial insurer could make a new rate filing.


Pending legislation

AB 2293 (Bonilla) – Currently in spot form, this bill is sponsored by the insurance industry (PIFC, ACIC, AIA and others). The industry notes that the bill will ultimately be aimed at providing clear guidelines regarding insurance coverage for ride-sharing services aimed at ensuring that the “personal and financial safety of consumers, passengers and drivers are protected.” The fact sheet says the bill also aims to clarify when a TNC’s coverage is activated, and will include disclosure so that “ride-sharing program participants (car owners, drivers and passengers) know where they stand” vis-à-vis insurance.

AB 2224 (Nazarian) – Also currently in spot form, this bill is apparently sponsored by the taxi industry.

EXHIBIT D

Reimagined startup seeks to provide cars, drivers for app-based ride services

By Jessica Kwong  JessicaGKwong

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MIKE KOZMIN/THE S.F. EXAMINER

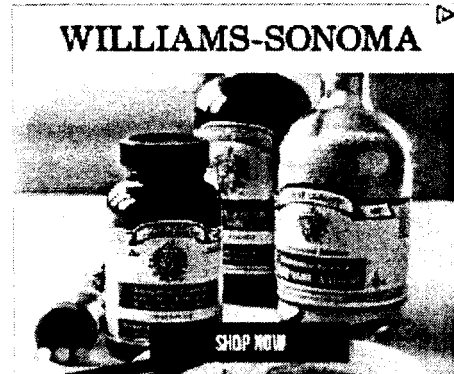
From left, Breeze co-founders Ned Ryan, Jeffrey Pang and Charlie Fang, sitting in a Breeze car, say their service is targeted at drivers working for ride services such as Uber and Lyft.

A startup launching in a rebranded form in San Francisco this morning is dedicated specifically to providing vehicles for people to drive for mobile app-based ride services such as Uber and Lyft, while urging drivers to not be limited to one company.

Zephyr Car, which had been operating in a low-key way since February, today emerged with a new name — Breeze — and a flexible pricing model, charging its members as little as \$20 per day plus 25 cents per mile for use of a car.

The three co-founders of the San Francisco-based startup, former employees of Uber, Homejoy and Twitter, said they spent weeks as drivers for transportation network companies, the state's category for ride services, and saw firsthand the need for a service like Breeze.

"We saw every one of these companies facing a shortage of drivers and we saw an opportunity to provide a new model where drivers share cars," said co-founder Jeffrey Pang, 25, who worked in finance and business development for Uber. "We see ourselves as solving the supply issue and getting more drivers for Uber and Lyft."



As Zephyr Car, the company charged a flat \$50 rate on weekdays and \$75 on weekends for cars financed with personal credit, then family and friends, and finally through Craigslist.

Where's the story?



2 Points Mentioned

Now with several partnerships, which Breeze co-founders declined to name, the company has improved its environmentally friendly offerings by acquiring new hybrid or fuel-efficient sedans. It has a fleet of 25 vehicles, which the company says is growing 20 percent per week.

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"Being able to acquire cars without any initial cash outlay is paramount because we have been bootstrapping thus far," said co-founder Ned Ryan, 25. The company hopes to raise venture capital and angel funding in the near future.

Breeze aims to pair two people per car whose schedules allow for the vehicle to be used seven days a week. Target members belong to no particular demographic, and range from college students to professionals looking to make up to \$35 an hour.

San Francisco resident Luke George, 45, who is interviewing for jobs in the Internet commerce industry, called Breeze a "godsend."

"I have a car, but it is a 1970s classic and doesn't qualify for Uber," he said. "Breeze was a way for me to jump in right away and earn some money without having to buy my own car."

Although Breeze only generates about \$50 per vehicle per day, Ryan said he sees "strong revenue growth" if cars are utilized 24/7 as the fleet grows. Members are required to have been approved as drivers for Uber or Lyft, at a minimum.

On Friday afternoon, Breeze operations guru Chris Yang conducted an orientation for five prospective members at the startup's co-working space at Sandbox Suites on 10th Street.

The four men and one woman, one in a button-down shirt and others in sweatshirts, listened as Yang said, "What we found is if you do both [Uber and Lyft], you can get 30 percent more money. When you catch one, you turn the other one off."

After the session, one attendee, Oakland resident Kris Luster, 23, said he was still thinking about whether to become a member, and mulled over the deposit fee of a few hundred dollars collected over four months.

"It gets a little cloudy with all the companies on the same team," Luster said, referring to working for several transportation network companies simultaneously. "You've got to take everything with a grain of salt."

Though Breeze has no formal partnership with transportation network companies, Pang said, "we are approved by them and they've all given us the green light to give them drivers."

The rebranding to Breeze was done in part because "many drivers had trouble pronouncing 'Zephyr,'" said Pang, who also started driving for DeSoto Cab Co. two months ago.

"Breeze embodies how simple and easy it is to become a member of our community," he said. "And so hopefully it's easier to pronounce and spell for folks as well."

But DeSoto Cab Company Owner and President Hansu Kim claimed Breeze's model is "based on a non-controversial, illegal practice." The red flag, he said, is that leasing vehicles goes against the definition of transportation network companies.

"One thing that is absolutely clear is that TNC's were for people using personal vehicles, not for people to lease out vehicles to people where it's not their personal car," Kim explained. "So the bottom line is this business plan is completely against the law. If they want to start a leasing business, they can do it as a taxi company or a limousine company."

Kim added his cab company hired Pang without knowing that he is a co-founder of Breeze.

"If he is doing something illegal in transportation that affects my business, I'm not going to allow that," Kim said.

Pang said that initial legality concerns have been quelled and Breeze requires full insurance coverage -- liability in excess of the state minimum.

"If someone were to rent a car from Hertz, that would be a violation of their terms of use because they don't allow for commercial use, but we are not that use case," he said. "It's analogous of scenarios where people drive a car they don't legally own as long as they are properly insured."

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JESSICA KWONG

jkwong@s Examiner.com

[@JessicaGKwong](#)

Bio:

Jessica Kwong covers transportation, housing, and ethnic communities, among other topics, for the San Francisco Examiner. She covered City Hall as a fellow for the San Francisco Chronicle, night cops and courts for the San Antonio Express-News, general news for Spanish-language newspapers La Opinión and El Mensajero....[more](#)

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