

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



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

Rulemaking 12-12-011

**REPLY COMMENTS OF LYFT ON ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE'S RULING AMENDING THE
SCOPING MEMO AND RULING FOR PHASE II OF PROCEEDING**

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In accordance with the Assigned Commissioner and Administrative Law Judge’s Ruling Amending the Scoping Memo and Ruling for Phase II of Proceeding (“Ruling”), Lyft, Inc. (“Lyft”) submits the following reply comments addressing issues raised in the opening comments of other parties to this proceeding. The responses below address only comments and recommendations relating to transportation network companies (“TNCs”). The comments are organized by subject, in the order that issues were identified in the Ruling. Specifically, Lyft discusses the following issues:

1. **Vehicle Inspections:** There is no need for expansion of the vehicle inspection requirements. Additional inspection rules are unnecessary and would not aid in public safety as there is no evidence of accidents or injuries linked to mechanical problems in TNC vehicles.
2. **Data Collection:** There is no evidence indicating a need for greater data collection, especially given the Commission’s broad auditing authority, which provides access to any information it deems necessary.
3. **Driver training:** Proposals suggesting that the Commission dictate the content and format of “uniform” driver training videos or require TNC drivers to participate in taxi driver training schools do not identify any reason such arbitrary and burdensome requirements should replace the current TNC training rules.
4. **Unaccompanied minors.** The Commission should clarify that a TNC that does not specialize in service for unaccompanied minors and establishes age restrictions to ensure that platform users are at least 18 years old will not be subject to additional rules designed for specialized providers of family transportation services.

5. **Trade dress.** The current trade dress requirements are appropriate and adequate to ensure public safety, consumer protection and innovation.
6. **Issues outside scope of the proceeding.** The Commission should not expand the scope of the proceeding, and should disregard all comments on extraneous issues (e.g. the definition of personal vehicle, fingerprint background checks) that are beyond the scope of issues identified in the Ruling.

I. Introduction

In opening this rulemaking proceeding, the Commission emphasized that its purpose was “not to stifle innovation and the provision of new services that consumers want, but rather to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these business models.”¹ Lyft commends the Commission for taking this position, and for its ongoing commitment to these goals.

The objective for this Phase II of the proceeding is to determine whether changes need to be made in the regulations in order to ensure public safety and consumer protection while also encouraging innovation.² Consistent with this purpose, Lyft encourages the Commission to focus on whether the existing regulations are currently operating to ensure public safety and consumer protection. If there is no evidence that different or additional rules are needed in the areas identified for review, the Commission need not and should not revise the existing TNC rules, which were adopted less than two years ago. If a proposal for rule change is considered, it needs to be carefully weighed against any harmful impacts it may have on innovation and consumer services. Lyft further encourages the Commission to start with the question *whether* changes in the TNC regulations are needed before considering specific recommendations for revisions or additions to the regulations.

¹ Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, R.12-12-011 p.2.

² Ruling p.3.

The San Francisco Taxi Workers Alliance (“SFTWA”) continues to challenge the existence and operation of TNCs under the Commission’s authority and regulation and urges the Commission to adopt a long list of new requirements. However, it has not supported such recommendations with any tangible or verifiable evidence that public safety is at risk due to TNC operation under the existing regulations. In the absence of such evidence of need, the Commission should not make changes that could have an adverse impact on TNC riders and drivers, and unnecessarily burden the Commission with additional costly regulatory obligations.

Moreover, the comments of the San Francisco International Airport and San Francisco Municipal Transportation Agency (“SFO/SFMTA”) and SFTWA offer a variety of proposed rule changes entirely premised on the argument that TNCs should be subject to the same regulations and requirements imposed by local regulators on taxis.³ This argument was made previously by the same parties, and was rejected by the Commission in Decision 13-09-045. Specifically, the Commission found that TNCs do not “fit neatly into the conventional understandings of either taxis or limousines,”⁴ that TNCs are charter party carriers, and are not taxis,⁵ and that TNCs are more appropriately regulated as a new category of charter party carriers, under rules tailored for TNCs.⁶ Thus, the issue of whether TNCs are “identical” to taxis and therefore should be subject to regulations designed for taxis has been addressed by the Commission in Decision 13-09-045, and the Commission’s decision that TNCs are *not* “identical” to taxis is settled as a matter of law. Both the California Court of Appeal and the California Supreme Court have rejected appeals of the Commission’s decision on this issue.⁷ Accordingly, the Commission should not

³ See SFO/SFMTA Opening Comments at 3. SFTWA Opening Comments at 1.

⁴ D.13-09-045 pp. 12, 66 (Finding of Fact 12).

⁵ Id., p. 66 (Finding of Fact 16).

⁶ Id., p.72 (Ordering Paragraph 1).

⁷ *Taxicab Paratransit Ass’n of California v. Cal. Pub. Util. Comm’n* (Aug. 22, 2014, No. C076432, 3d Appellate District) Summary Order Denying Petition for Review; *Taxicab Paratransit Ass’n of California*

consider proposed rule changes that are, in effect, a collateral and untimely challenge to the settled question of the regulatory status of TNCs.⁸

II. Discussion

A. Vehicle Inspections

The existing 19-point inspection checklist and the TNC vehicle inspection rules, which allow either TNCs or a third party to conduct inspections, are effective. As discussed in Lyft's opening comments, there is no evidence of accidents or injuries linked to mechanical problems in TNC vehicles. The 19-point inspection checklist and requirement goes well beyond the rules currently applicable to unmodified commercial TCP vehicles carrying less than 10 passengers.⁹ Notably, the parties suggesting changes in the vehicle inspection requirements provide no evidence justifying such proposed changes. For these reasons, there is no justification for making arbitrary changes to the existing vehicle inspection rules.

1. Mileage

SFO/SFMTA recommends adding a mileage check to the inspection list and a 375,000 mileage restriction to the TNC vehicle inspection rules.¹⁰ SFTWA recommends that the rules require inspections annually or every 50,000-100,000 miles.¹¹ Both parties base their recommendations solely on the argument that TNC inspection requirements should be the same as the requirements designed for taxis. However, neither party discusses the obvious distinction

v. Pub. Util. Comm'n (Nov. 12, 2014, No. S220982, Supreme Court of California) Summary Order Denying Petition for Review; *Taxicab Paratransit Ass'n of California v. Cal. Pub. Util. Comm'n* (Nov. 12, 2014, No. S218427, Supreme Court of California) Summary Order Denying Petition for Review).

⁸ See D.11-04-033 at 10, citing Pub. Util. Code §1709 (In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive) and *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630).

⁹ Owners of unmodified limousines that seat less than 10 passengers need only comply with the statutes applicable to all other vehicle owners and "inspect all vehicles and maintain proper documentation of such inspections." GO 157-D, Part 4.

¹⁰ SFO/SFMTA Opening Comments at 3.

¹¹ SFTWA Opening Comments at 3.

between taxis, which are commercial vehicles driven full time for commercial purposes, and TNC vehicles, which are personal cars used to provide rides (mostly on a part-time or occasional basis) through the TNC platform.

There is no need or justification to adopt the proposed mileage inspection or eligibility limits. Taxis may be driven twenty-four hours a day/seven days a week. TNC vehicles are not. The Commission Safety and Enforcement Division has reported that drivers who use TNC platforms drive a median of only 15.74 hours per month and a mean of 22.69 hours per month.¹² Moreover, TNCs have implemented vehicle restrictions (such as Lyft's rule excluding vehicles that are more than 12 years old) that already address the very unlikely possibility that a car with more than 375,000 miles would be used to provide rides to TNC users. Basing inspection requirements on mileage might work for taxis, which are owned and controlled by a commercial entity that can monitor and record mileage on an ongoing basis. It would not be workable for TNC vehicles, since they are owned by individuals and used for private and family purposes. For these reasons, and because there is no public safety concern supporting the proposals to impose mileage-based inspection requirements on TNCs, proposals for such requirements should be rejected.

2. Inspectors

In its opening comments, SFO/SFMTA recommends that only automotive technicians licensed by the California Bureau of Automotive Repair should be allowed to conduct inspections on TNC vehicles.¹³ SFTWA apparently disagrees, stating that licensed mechanics “cannot be fully trusted” because they have a conflict of interest that will “inevitably gravitate to

¹² See Safety and Enforcement Division Report, California Public Utilities Commission En Banc, Transportation Network Companies Rules and Regulations, Nov. 4, 2014.

¹³ SFO/SFMTA Opening Comments p. 4.

those with the lowest standards.”¹⁴ For this reason SFTWA recommends that all inspections be performed by “a governmental entity such as the California Highway Patrol.”¹⁵

Neither SFO/SFMTA nor SFTWA cite a single instance in which an inadequate inspection resulted in harm to a TNC rider or to the public safety. There is no record supporting any change in the current TNC rules permitting TNC inspections of vehicles used by TNC drivers.

SFO/SFMTA’s proposal to require every TNC driver to obtain an inspection by automotive technicians licensed by the California Bureau of Automotive Repair does not discuss the cost of this requirement, or the impact this unnecessary outside inspection would have on lower-income drivers. There is no explanation as to why having a California Bureau of Automotive Repair certified mechanic conduct the 19-point inspection of personal vehicles of TNC drivers is necessary or what concrete benefit would result.

The SFTWA’s suggestion that the California Highway Patrol (“CHP”) undertake inspection of tens of thousands of TNC vehicles in the state of California is patently unrealistic and infeasible. It is not the job of the California Highway Patrol to perform vehicle inspections on every personal car that may be used to provide a lift to a user on a TNC platform, and SFTWA provides no information suggesting that the California Highway Patrol is equipped or would be able to perform this function.¹⁶ Imposing this obligation on the CHP, even if it were feasible, would create additional cost and delay for TNC drivers and a burden for the CHP. For all of these reasons, the proposals to change the existing in-house inspection option should be rejected.

¹⁴ SFTWA Opening Comments p. 3.

¹⁵ *Id.* at 4.

¹⁶ The California Highway Patrol conducts inspections of specialized vehicles and buses (see, e.g. Cal. Veh. Code §34501.8), but there is no requirement for CHP inspection of unmodified TCP vehicles carrying less than 10 passengers or taxis.

B. Data Collection

Parties propose a variety of expanded data collection requirements, but fail to explain how they would benefit the Commission's interest in protecting public safety, especially in light of the Commission's current broad auditing power. TNCs already have an obligation to provide data in response to the Commission's audits and data responses. Accordingly, there is no justification for changing the data requirements at this time.

SFO/SFMTA proposes a significant expansion of driver reporting requirements.¹⁷ The justification offered is Commission "validation" of inspection and background checks and speculation that TNC drivers are engaging in identity theft to circumvent the existing TNC safety rules.¹⁸ This request should not be adopted. There has been no demonstration of need or that current data reporting requirements, combined with the Commission's broad audit powers, are in any manner inadequate. As SFO/SFMTA concedes, amassing vast data banks of driver and vehicle information will not necessarily advance public safety.¹⁹ Yet, the requested quarterly reports would include records that have no relationship to safety or consumer protection.²⁰

SFTWA cites similarly vague and speculative justifications for proposing that the Commission impose TCP vehicle list requirements on TNCs.²¹ The Commission should reject this recommendation. Limousine companies have a limited, identifiable fleet of commercial vehicles. TNCs do not, and the list of active TNC drivers and vehicles changes on an ongoing

¹⁷ SFO/SFMTA Opening Comments p.6.

¹⁸ *Id.* p.5.

¹⁹ *Id.* at 6.

²⁰ The proposed quarterly reports would, for example, include number of applicants, number of applicants rejected, number of drivers that have successfully completed driver training (which by definition is all of the TNC drivers), and suspensions (which occur for reasons unrelated to safety enforcement). The reports would include information that overlaps existing reporting requirements (drivers involved in accidents) and information that is only vaguely described and/or not available to the TNC (driver "contacts" with law enforcement).

²¹ SFTWA Opening Comments at 5.

basis. The Commission can request vehicle information from TNCs as needed under the existing rules.

C. Driver Training

SFO/SFMTA recommends requiring “uniform training” on prescribed subjects. This training would involve Commission-approved video or computer-based interactive training, and auditing by SED.²²

Lyft does not support the proposal that TNC driver training be “uniform,” i.e. delivered through one-size-fits-all video or computer-based programs. Driver training of drivers on the Lyft platform includes specific information related to the Lyft app, culture, and the company. It is important that Lyft can train drivers specifically for its platform and on how the Lyft app works. There is no evidence that the current driver training rules are deficient, and/or that additional “uniform” training would improve public safety.

SFTWA proposes that the Commission establish TNC driver training rules that are modeled on taxi driver requirements, including a 28-hour course conducted by an “accredited school.” The only reason cited in support is that “generally accepted norms and requirements for taxis should be applied to all charter-party carriers.”²³ As discussed above, the Commission has determined that TNCs are not taxi companies and that TNC drivers are not professional taxi drivers. The Commission should reaffirm that determination and ignore SFTWA’s proposals to regulate TNCs as taxis.

²² SFO/SFMTA Opening Comments at 7. The recommended subjects are: safe driving in highly congested areas, awareness of bike lanes and local ordinances requiring drivers to share the road, assisting passengers in and out of vehicles when needed, what to do in the event of an accident, and how to handle intoxicated passengers.

²³ Id. p.1.

D. Unaccompanied Minors

As discussed in Lyft's opening comments, Lyft does not provide specialized service to families requiring transportation of unaccompanied children. Lyft users are required to be at least 18 years of age, and it is Lyft's policy that unaccompanied minors are not permitted to take Lyft rides on their own.²⁴ Lyft requests that the Commission clarify that a TNC that does not specialize in service for unaccompanied minors and establishes age restrictions to ensure that platform users are at least 18 years old will not be subject to additional rules designed for specialized providers of family transportation services.

SFO/SFMTA recommends that every TNC should be subjected to the additional measures applicable to Infant and Child Common Carriers unless it "has a Commission-approved means of verifying that a ride request will not result in the transportation of unaccompanied minors."²⁵ There is no explanation of what the "means of verification" would be or how it could possibly be implemented. A TNC cannot verify the identity and age of every passenger that gets into the car. Any attempt to do so would be burdensome, intrusive, and an invasion of privacy. More to the point, such inquiries are unnecessary if a TNC has policies in place to ensure that nobody under 18 has an account on the platform. As a regulatory reality the Commission can only set requirements and expectations that can be reasonably met and enforced.

As evidenced by Decision 97-07-063, the Commission recognizes a heightened responsibility to regulate services that provide rides to unaccompanied minors. That is critically important, and undisputed. However, it would be patently unreasonable to impose the same level of regulation on all other TNC companies for the sole reason that they cannot prove and verify in a SED audit that every unaccompanied rider is at least 18 years old.

²⁴ <https://www.lyft.com/help/article/1515412>

²⁵ SFO/SFMTA Opening Comments p.9.

Shuddle points out in its opening comments that the Trustline Registry used for regulating passenger stage corporations is outdated, limited in scope, confined to California, costly, time consuming, and less effective than modern multi-pronged approaches to criminal background screening.²⁶ While Lyft is not involved in providing unaccompanied minor transportation services, Lyft agrees with Shuddle that there are deficiencies in Trustline fingerprinting background checks.

E. Trade Dress

In response to the Commission’s question whether the existing TNC trade dress is adequate to ensure public safety and consumer protection, both SFO/SFMTA and SFTWA offer proposals for new requirements. However, neither proposal has any obvious relationship to the question as related to safety and consumer protection.

Citing “anecdotal evidence” that two drivers were mistaken for TNCs in San Francisco and the fact that a number of TNCs serving the airport have been cited for failure to comply with trade dress rules, SFO/SFMTA proposes that the Commission force TNCs to “predicate tip payment on whether a TNC vehicle is displaying trade dress.” This proposal should be rejected. First, there is no suggestion that changes in trade dress rules are needed to address public safety or consumer protection issues. Second, the proposal to somehow disable tipping until a rider verifies trade dress is not possible. A TNC cannot detect in real time whether trade dress is being displayed on a specific vehicle, and it is up to the passenger to decide soon after the trip is completed whether to give a tip. Involving TNC passengers in policing trade dress would be a misguided approach to enforcement.

SFTWA’s more extreme proposal to require permanent trade dress is unsupported, facially inconsistent with Decision 13-09-045, and unfeasible. SFTWA claims that removable

²⁶ Shuddle Opening Comments at 2.

trade dress can “hamper investigation of accidents and lead to insurance fraud” but offers no evidence that any incidents of this sort have occurred. TNC drivers cannot use permanent trade dress because they drive private vehicles. When the driver’s app is turned off, the vehicle is a private vehicle, not a TNC vehicle. Permanent trade dress on a TNC vehicle could cause passenger confusion, and would discourage participation by TNC drivers for no good reason. The existing rules relating to trade dress are functional, appropriate and adequate to the Commission’s purpose.

F. Issues Not Addressed in the Scoping Memo

The Commission should not consider comments that are outside the scope of this Phase II proceeding as identified in the Ruling. The Assigned Commissioner and Administrative Law Judge identified specific issues for comment. The scope is limited to those questions. Most parties have respected the scope of the proceeding and the Commission’s instruction in the Ruling. However, SFO/SFMTA uses its comments to request that the scope of the proceeding be expanded to define “personal vehicle,” SFO/SFMTA and SFTWA propose to impose new fingerprinting requirements on all TNC drivers, and SFTWA makes numerous other proposals that range far beyond the scope of the questions identified for Phase II. All comments and recommendations that are outside the scope as established by the Commission are inappropriate and should be disregarded. The Phase II Scoping Ruling was clear and specific, and it would not be appropriate or fair to other parties to allow the expansion of the scope of the proceeding through the comment process. Lyft briefly addresses the “personal vehicle” definition and fingerprinting issues below, while expressly reserving its objection above.

1. Definition of “personal vehicle”

SFO/SFMTA asserts that it is “unclear” whether the term “personal vehicle” as used in Decision 13-09-045 means that the driver must be the “registered owner” of the car or can be “someone else who has the owner’s permission to use the vehicle as a TNC”.²⁷ Lyft strongly disagrees that there is any ambiguity requiring clarification. The Commission’s intent in using the term “personal vehicle” is clarified on page 24 of Decision 13-09-045, where the Commission explained that:

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.²⁸

The Commission specifically addressed ownership of TNC vehicles in Decision 13-09-045, including the provision that a TNC “is not permitted to itself own vehicles used in its operation or own fleets of vehicles.”²⁹ The Commission could have but did not make any distinction between drivers owning or leasing personal vehicles.

The presumption that a “personal vehicle” may include a vehicle that is not “registered” in the user’s name comports with the ordinary meaning and common understanding of the term “personal vehicle,” since millions of Californians lease or rent vehicles for personal use. It also is consistent with Section 5362 of the PU Code, which clarifies that the “owner” of a vehicle under the charter-party carrier statutes includes a person “who has a legal right to possession of the vehicle pursuant to a lease or rental agreement.” The Commission need not and should not consider SFO/SFMTA’s suggestion that the Commission should expand the scope of this proceeding to consider whether a “personal vehicle” must be registered to the TNC driver. Leaving intent and interpretation aside, it would be a terrible idea to restrict TNC drivers to

²⁷ SFO/SFMTA Opening Comments at 11. See also SFTWA Opening Comments at 5.

²⁸ D.13-09-045 at 24; Finding of Fact 23.

²⁹ Id., Finding of Fact 25.

persons who are named on the registration of the TNC vehicle, since such a policy would discriminate against low-income individuals, students, non-car-owning spouses and others.

2. Fingerprinting

SFTWA proposes that the Commission require TNCs to perform a live-scan Department of Justice background check on all TNC drivers, and SFO/SFMTA makes a similar recommendation in its comments.³⁰ As a threshold matter, such proposal is not responsive to any of the identified questions in the Ruling. The fingerprinting proposals should be rejected. Neither SFO/SFMTA nor SFTWA has offered any factual evidence or meaningful policy justification for imposing such a burdensome requirement on TNCs.

Fingerprint background checks are biased against communities of color.

Fingerprint-based background checks have been criticized by organizations like the National Employment Law Project (“NELP”) and the Greenlining Institute, which have grave concerns about both missing and inaccurate database information.³¹ With over half of the records in fingerprint databases failing to include a final disposition, the NELP Study found that these inaccuracies “have a devastating impact on workers, especially workers of color who are disproportionately impacted by the criminal justice system.”³² Additionally, the process of fingerprinting—particularly at a law enforcement office—deters participants from many communities of color without increasing public safety. As the Greenlining Institute notes:

The addition of stricter background check regulations and fingerprinting risks will create additional delays and extra costs especially likely to burden and deter participation by drivers with limited incomes. Fingerprinting not only deters

³⁰ SFO/SFMTA Opening Comments pp. 9,12; SFTWA Opening Comments p.4.

³¹ See, Madeline Neighly and Maurice Emsellem, Wanted: Accurate FBI Background Checks for Employment (“NELP Study”) at 2 (Nat'l Empl. L. Project, July 2013), available at <https://nelp.org/content/uploads/2015/03/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf>. Letter from Greenlining Institute to City and County of San Francisco District Attorney George Gascón (February 18, 2015) (Attachment A).

³² NELP Study at 1.

those members of our community from even applying to become a driver, but also has a high likelihood of negatively impacting applicants of color who go through the fingerprinting process.³³

Out of a desire for inclusiveness and equal opportunity, as well as for other reasons discussed below, Lyft encourages the Commission to reject proposals to require fingerprinting of TNC drivers.

Limitations of the Fingerprint Based Background Check System. A "fingerprint investigation" as proposed by SFTWA and SFO/SFMTA is presumably a background check that relies on the FBI's fingerprint-based Interstate Identification Index system. When the FBI's fingerprinting system was created in 1924, its fingerprint reports, or "rap sheets," were not intended for purposes of employee or independent contractor background checks, but instead to conduct criminal investigations and prosecutions.³⁴ Using the FBI system in the employment or independent contractor context today is flawed for a number of reasons.

First and foremost, the FBI's records are notoriously incomplete because the FBI system does not pull directly from county records, but instead depends entirely on state agencies to timely and accurately report fingerprint-based records from state databases.³⁵ Unfortunately, reporting by the states is highly irregular and in many instances, woefully deficient.³⁶ Second, the FBI system excludes thousands of county records that are not associated with a fingerprint in cases where a fingerprint was never taken.³⁷ Instead, these criminal records are associated with

³³ Attachment A. p.2.

³⁴ NELP Study at 2.

³⁵ See Id. (detailing the deficiencies with the federal system).

³⁶ See Id. at 11-13 (summarizing 2010 Department of Justice study of state reporting to the FBI system).

³⁷ See, e.g., J. Benzing, "Pennsylvania Police Fail Fingerprint Thousands of Suspected Criminals", Public Source.org (summarizing a Pennsylvania audit revealing that 30,000 suspected criminals were not fingerprinted by Pennsylvania police in 2013), available at <http://publicsource.org/investigations/pennsylvania-police-fail-fingerprint-thousands-of-suspected-criminals#.VVY6BEa9zWk>.

the personal identifiers that Lyft uses in performing its background checks, such as name and date of birth.

The FBI's centralized fingerprint system also suffers from lags in reporting that are not present when doing a nationwide search using personal identifiers. Criminal records are recorded at the primary source, i.e., county courthouses. Therefore, the FBI system, which relies on follow-up reporting of that source information from state databases, necessarily suffers from inherent lags and inaccuracies.³⁸ Additionally, the state databases themselves are often not current because of the significant backlog in processing fingerprint cards.³⁹

Fingerprinting is not necessary to ensure public safety. There is no evidence that the Commission's current TNC background check requirements are not adequate and effective. In fact, regulators across the nation have adopted rules requiring privately administered background checks based on social security numbers.⁴⁰ In the last two years, the California legislature has rejected legislation requiring additional requirements for TNC applicants.

In order to comply with the Commission's TNC safety requirements and meet its own high standards for assuring safety, Lyft has contracted with a highly-regarded background investigation company to conduct a full background screening for each of its driver applicants. The following steps are followed in investigating each of Lyft's driver applicants:

³⁸ Nat'l Ass'n of Prof'l Background Screeners, Myths and Myth Busters about Background Screening and Fingerprinting, available at http://portal.napbs.com/files/resource_library/Government%20Relations/Documents/NAPBS%20Myth%20Busters%20Leave%20Behind.pdf.

³⁹ U.S. Dep't of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems (2012) at 9 (noting that 16 states report having a backlog for arrest data to state criminal databases), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁴⁰ Since the conclusion of Phase I of this rulemaking proceeding, the following states have enacted legislation or adopted rules regarding TNCs, and all of these states have rejected fingerprint-based background checks in favor of privately administered checks: Arizona, Illinois, Virginia, Utah, Nevada, Kentucky, Nebraska, Idaho, Georgia, Oklahoma, Pennsylvania, Minnesota. The cities of Washington DC, Chicago, Austin, Seattle, Dallas, Nashville, Detroit, Minneapolis and St. Paul have also adopted SSN-based checks for TNC drivers.

- A social security number trace is used to generate a history of past and present addresses for the applicant. For every county of residence that results from the social security number trace, direct searches of court records from counties screen for both misdemeanor and felony criminal cases.
- An enhanced nationwide criminal search pulls from hundreds of data sources by searching state, county, and corrections criminal record databases. This search reveals crimes that may have been committed in places other than an applicant's county of residence.
- A Department of Justice 50-state sex offender search pulls from hundreds of nationwide data sources to further reveal any crimes that may have been committed in places other than an applicant's county of residence.
- A federal criminal record search is conducted in all federal districts where a subject has had an associated address for convictions of federal offenses.
- The applicant's personal identifiers are run against the records from over 3,500 booking and incarceration locations across the nation. If there is a hit, then a county criminal search for that jurisdiction is conducted to find the underlying convictions. This search locates jurisdictions where potential crimes took place independently of the applicant's address history from the social security trace.
- Lyft confirms the personal identity of applicants by requiring a copy of a state-issued driver's license. When the applicant goes through Lyft's in-person orientation process, Lyft confirms that the name and photo on the drivers license matches the name submitted by the driver applicant.

Lyft has made a significant investment in its system for checking drivers in order to fully comply with the Commission's regulations and because Lyft has every incentive to ensure that its passengers are safe and that background checks are thorough and adequate. Lyft's business depends on the safety of the platform, and Lyft takes that responsibility very seriously.

Neither SFTWA nor SFO/SFMTA acknowledges or addresses any of the issues discussed above, or the many additional statutory, regulatory and policy questions that would likely arise were the Commission to consider adopting a TNC fingerprinting proposal. These issues would include the application of the requirement to other TCPs that are currently not subject to a fingerprinting requirement, the administrative burden on the Commission of administering and enforcing compliance with the requirement, the question of whether thousands of casual TNC drivers would have adequate access to facilities equipped with the kind of biometric scanning equipment that meets federal requirements, the cost to part-time and

occasional drivers, many of whom come from communities of color, privacy concerns, and impacts on communities that rely on TNCs for transportation.

Finally, the Commission should consider that no background check in and of itself will prevent any incident of occurring in a vehicle. A background check can only determine whether a driver has a prior criminal record. No evidence has been presented to support the notion that a fingerprint based background check will accomplish that purpose better than a privately administered background check. And, as demonstrated above, there is significant evidence regarding the shortcomings and biases of fingerprint based background checks. Accordingly, the Commission should reject proposals to institute fingerprinting requirements for TNC drivers.

III. Conclusion

In reviewing the opening comments of parties in response to the questions raised by Assigned Commissioner Randolph and ALJ Mason's Phase II Scoping Memo and Ruling, it is notable that the TNC regulations adopted less than two years ago by this Commission are working very well. While some parties advance suggestions for rule changes, their proposals do not identify defects in the existing safety or consumer protection requirements. Rather, the parties that have previously argued that TNCs should be regulated as taxis (or subjected to more strenuous regulations) continue to raise the same arguments here. Lyft has responded to those arguments and recommendations in detail above, but finds no evidence in the record showing a need to change the existing TNC regulations at this time.

As a TNC company committed to safety, consumer service and providing economic opportunities in the communities it serves, Lyft is pleased that the current TNC regulations are functioning well. Lyft welcomes discussion of regulatory improvements that are aimed at addressing specific issues, but urges the Commission to avoid revising or expanding the existing

