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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**PHASE III. B. SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER**

Summary and Background

In accordance with Ordering Paragraph 19 of Decision 16-04-041, the Scoping Memo and Ruling dated October 26, 2016, opened a Phase III in this proceeding. Phase III was broken down into two sub phases: III. A. and III. B.

In Decision 16-12-037, the Commission addressed Phase III. A., the definition of a personal vehicle.

This Scoping Memo and Ruling opens Phase III. B. in order to address issues reserved from Phase II of this proceeding, as well as other issues that are pertinent to this proceeding. In preparation for this Scoping Memo and Ruling, the Commission held a workshop on February 17, 2017 entitled Workshop: Criminal Background Checks for TNC Drivers.

1. Scope of Issues

Because the priority for resolving the various Phase III. B. issues may shift depending on the facts known to the Commission regarding the TNC operations, the need to issue decisions in conformity with the directives from the Legislature, public policy, and safety considerations, Phase III. B.'s issues will be divided into

the following tracks and, as the assigned Commissioner, I will determine the order in which these various tracks shall be resolved:

Track Numbers	Issues	Questions
1	Background check requirements that should be applicable to TNCs	<ol style="list-style-type: none"> 1. What public policy and or safety objectives would be achieved by requiring all existing and prospective TNC drivers to undergo a biometric (<i>i.e.</i> the use of a person's physical characteristics and other traits) background check? 2. Does subjecting all TNC drivers to a biometric background check adversely affect the chances of persons of different races or ethnicities to pass the background checking process? Explain why or why not. 3. In addition to a biometric background check, are there other background check protocols that the Commission should consider adopting? Explain why or why not. 4. How would any other background check protocols described in

		<p>#3 above satisfy California's public policy and or safety objectives?</p> <p>5. What background check protocol should the Commission adopt to comply with the requirements and goals of Assembly Bill 1289, codified at Pub. Util. Code §5445.2?</p>
2	Regulatory status of Uber Technology, Inc, (Uber).	<p>1. What is Uber for purposes of determining the full extent of the Commission's jurisdiction over Uber's California operations and its subsidiaries?</p> <p>2. Should Uber be considered a Charter-Party Carrier (TCP)?</p> <p>3. Should Uber USA be considered a TCP?</p> <p>4. Should any other Uber subsidiary or Uber affiliated business conducting or assisting in the conducting of transportation service be considered a TCP?</p>
3	Accessible vehicle requirements for TNCs.	<p>1. What is the percentage of accessible vehicles that TNCs make</p>

		<p>available?</p> <p>2. Are there any opportunities for the TNCs to provide increased accessible vehicle services to TNC customers?</p>
4	Regulation of Autonomous Vehicles	<p>1. If a person or entity partners with, or enters into an agreement with, a TNC to supply autonomous vehicles for passenger transportation service,</p> <ul style="list-style-type: none"> • should the person or partnering entity be required to obtain authority from the Commission to operate as a TNC, TCP, or should the Commission designate an alternate regulatory category; and • Should the TNC that is a party to the partnership or agreement be required to

		<p>obtain authority from the Commission to operate as a TCP, or should the Commission designate an alternate regulatory category?</p> <p>2. Should any interested party be permitted to file a petition to modify any of the existing Commission decisions, rules, or general orders in order for autonomous vehicles to lawfully provide passenger transportation service? If so, identify all such decisions, rules, and general orders and explain how they should be modified.</p> <p>3. What other proposals and/or procedural avenues should the</p>
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		Commission consider in determining the most comprehensive, forward thinking, and safest manner in which to regulate autonomous vehicles?
5	Should the Commission should establish a website portal for TNC data?	<ol style="list-style-type: none"> 1. What is the public and/or research value of a website, database, or other publicly accessible means to host data about transportation for hire that is under the Commission's jurisdiction? 2. What has been the effectiveness of third-party hosted websites that provide data about Commission programs? 3. What concerns, if any, are there about the ability of a Commission-sponsored website to protect customer privacy and market sensitive data? 4. What characteristics

		<p>or design specifications are needed to ensure that a Commission-sponsored website would be flexible enough to adjust to future legislative action including, but not limited to: new background check standards that are germane to the Commission's jurisdiction over TNCs?</p>
6	<p>Requirements that should be applicable to TNCs concerning the incidental transportation of minors</p>	<ol style="list-style-type: none"> 1. Provide the Commission with any updates to your plans, submitted previously in response to the May 23, 2016 and June 6, 2016 ACRs, for handling incidental transportation of minors. 2. Should the Commission adopt any additional requirements for regulating TNCs that handle the incidental transportation of minors? Explain why or why not.
7	<p>Requirements that should be applicable to TNCs to ensure public safety</p>	<ol style="list-style-type: none"> 1. Are there any additional issues regarding TNC operations that impact

		public safety? 2. Should the Commission adopt any additional regulations to address these issues?
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2. Schedule for Comments, to file a Petition for Modification, and for Comments on the Workshop Report

Track 1	April 30, 2017	Opening comments filed and served
Track 1	May 15, 2017	Reply comments filed and served
Track 2	May 31, 2017	Opening comments filed and served
Track 2	June 15, 2017	Reply comments filed and served
Track 3	July 15, 2017	Opening comments filed and served
Track 3	July 31, 2017	Reply comments filed and served
Track 4	August 15, 2017	Opening comments filed and served
Track 4	August 31, 2017	Reply comments filed and served
Tracks 5, 6, and 7	Dates for Opening and Reply comments TBD	
3 rd Quarter 2017	Proposed decision on Track 1 and any other Tracks ready for decision	

For Track 2, the parties shall respond to the questions above in Section 1 of this Scoping Memo and Ruling. In addition, Uber shall respond to the questions

in the Attachment A to this Scoping Memo and Ruling. Other parties may also respond to the questions in the Attachment A to this Scoping Memo and Ruling if they have information relevant to the questions.

Finally, following the February 17, 2017 Workshop: Criminal Background Checks for TNC Drivers, the Commission's staff stated it would issue a workshop report within 45 days of the Workshop for public comment. Opening Comments shall be filed and served 30 days after the workshop report has been served on the service list, and Reply Comments shall be filed and served 15 days after the filing and service of the Opening Comments.

To the extent necessary, the Assigned Commissioner or the assigned Administrative Law Judge (ALJ) may adjust or supplement the schedule for submitting opening and reply comments regarding the scoped issues, the workshop report, as well as the time period for filing petitions for modification.

Consistent with Pub. Util. Code § 1701.5(a), we intend to complete this proceeding within 18 months from the date of this Scoping Memo and Ruling.

3. Categorization

In the Order Instituting Rulemaking, issued on December 20, 2012, the Commission preliminarily determined that the category of the proceeding was Quasi-legislative. The Scoping Memo and Ruling from Phase I of this proceeding, issued on April 2, 2013, confirmed that categorization.

4. Need for Hearing

The Commission in the Order Instituting Rulemaking also preliminarily determined that hearings are not required.

5. Ex Parte Communications

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJ are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(b) and Article 8 of the Commission's Rules of Practice and Procedure.

6. Assigned Commissioner

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned ALJ.

7. Outreach Effort

Cal. Pub. Util. Code § 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

R.12-12-011 was served on city, county, and state governmental agencies interested in the Commission's regulation of the TCP industry. The service and notice of R.12-12-011 occurred prior to the enactment of Cal. Pub. Util. Code § 1711(a) and was therefore not subject to the requirements of Cal. Pub. Util. Code § 1711(a) with respect to the Preliminary Scoping Memo for this rulemaking proceeding.

8. Service of this Phase III. B. Scoping Memo and Ruling

Given the importance of Phase III B. of R.12-12-011, we direct the Executive Director to serve this Scoping Memo and Ruling on the following:

- All California counties, incorporated cities, and incorporated towns, to the extent practical.
- All California agencies responsible for regulating vehicles entering and exiting airports.

Such service does not confer party status in this rulemaking proceeding or result in any person or entity being added to the service list for this proceeding.

9. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f). Discovery

10. Discovery

Discovery may be conducted by the parties consistent with Article 10 of the Commission’s Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the ALJ. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

11. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpsc.ca.gov/pao> or contact the Commission’s Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. Schedule for Completion

It is the Commission’s intent to complete this proceeding within 18 months of the date this Scoping Memo and Ruling is issued. This deadline may be extended by order of the Commission pursuant to Pub. Util. Code § 1701.5(a).

IT IS RULED that:

1. The category of this proceeding continues to be quasi-legislative.

2. The scope of the issues for Phase III.B. of this proceeding is as stated in Section 1 of this Scoping Memo and Ruling.
3. Hearings are not necessary.
4. *Ex parte* communications are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(b) and Article 8 of the Commission's Rules of Practice and Procedure.

Dated April 7 2017, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

Attachment A
Track 2 Questions

In its July 1, 2015 Response to Assigned Commissioner and Administrative Law Judge's Ruling, Uber Technologies, Inc. (hereinafter Uber or UTI) answered Question 3 (Explain the roles that Uber, Rasier LLC, Rasier-CA, LLC, and UberX play in facilitating the provision of prearranged transportation services using the Uber App), in part, as follows:

UTI has also granted a perpetual and non-exclusive license to Uber USA, LLC (Uber USA) to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber." Uber USA, which, in California, is primarily focused on providing the Uber Service for TCP Holders, provides riders access to the Uber rider app (Uber Rider APP), subject to Terms of Use.

These questions are a follow up to the responses Uber previously filed and served. While it is possible that Uber may be the only party with information sufficient to answer the questions, the Assigned Commissioner invites all parties to respond to the extent that they have information germane to this inquiry.

1. Does Uber USA, LLC (Uber USA) still possess a perpetual and non-exclusive license to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber"? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
2. Is Uber USA still primarily focused on providing the Uber Service for TCP Holders? If so, state all facts, legal arguments, and identify all documents,

that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.

3. What legal authority permits Uber USA to provide the Uber Service for TCP Holders in California?
4. Has Uber USA filed any legal papers with the California Secretary of State, and/or any other California state agency, in order to conduct business in California? If so, identify all legal papers that have been filed with the California Secretary of State and/or any other California state agency.
5. What legal authority permits Uber to grant a perpetual and non-exclusive license to Uber USA to use Uber's intellectual property, including the Uber Platform and the registered trademark "Uber" in California?
6. Identify Uber and Uber USA's business address in California.
7. List the current officers and directors of Uber and Uber USA. For each person listed, indicate their full name, title, job function, and work address. Production of an organization chart with this information is preferred.
8. Identify the number of Uber and Uber USA employees working in California.
9. Identify Uber and Uber USA's workers compensation carriers including policy numbers, dates of coverage, and policy limits.

10. Has Uber USA held annual meetings of its directors, shareholders, or members? If so, list the dates of the meetings and the directors, shareholders, or members who were in attendance.
11. Does Uber USA maintain records or minutes of the annual meetings? If so, who at Uber USA maintains these records or minutes?
12. Has Uber USA adopted company bylaws? If so, produce a copy of Uber USA's current company bylaws.
13. Describe the steps that Uber USA takes to ensure that its officers and agents abide by Uber USA's bylaws.
14. Does Uber USA maintain accounts with any banks, savings and loans, and/or other financial institutions? If so, identify the names and addresses of the banks, savings and loans, and/or other financial institutions.
15. Does Uber maintain accounts at the same banks, savings and loans, and/or other financial intuitions as Uber USA? If so, identify the names and addresses of the banks, savings and loans, and /or other financial institutions.
16. Are Uber and Uber USA joint account holders at any banks, savings and loans, and/or other financial institutions? If so, identify the names and addresses of the banks, savings and loans, and /or other financial institutions.

17. Describe how Uber USA satisfies the requirement of Pub. Util. Code § 5374 (a)(1)(A) that “it is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.”
18. Does Uber USA provide riders access to the Uber rider app (Uber Rider APP)? If so, explain how Uber USA provides riders access to the Uber Rider APP.
19. Does any other Uber subsidiary or affiliated entity provide or assist in providing riders access to the Uber Ride APP to be connected to a TCP Holder? If so, identify each subsidiary or affiliated entity and explain its role.
20. Is Uber USA a TCP? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
21. Is Uber a TCP? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
22. Does Uber play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of General Order (GO) 157-D? If so, state all facts, legal arguments, and identify all documents, that support your answer.
23. Does Uber play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of The Charter-Party

Carriers Act (Pub. Util. Code §§ 5381-5389)? If so, state all facts, legal arguments, and identify all documents, that support your answer.

24. Does Uber USA play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of The Charter-Party Carriers Act (Pub. Util. Code §§ 5381-5389)? If so, state all facts, legal arguments, and identify all documents, that support your answer.
25. Does Uber USA play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of GO 157-D? If so, state all facts, legal arguments, and identify all documents, that support your answer.
26. Besides granting a perpetual and non-exclusive license to Uber USA, what role, if any, does Uber play in providing the Uber Service to TCP Holders?
27. In the event a passenger, pedestrian, or driver of another vehicle claims that the TCP Holder providing the Uber Service has caused either personal injury or property damage, what role, if any, does UTI play in investigating and/or resolving these claims?
28. In the event a passenger, pedestrian, or driver of another vehicle claims that the TCP Holder providing the Uber Service has caused either personal injury or property damage, what role, if any, does Uber USA play in investigating and/or resolving these claims? If your answer is none, explain your answer (including references to any supporting facts, documents, law, rules, statutes, or orders).
29. If the insurance held by the TCP Holder providing the Uber Service is either insufficient or unavailable to pay a claim made against the TCP Holder by a passenger, pedestrian, or driver of another vehicle, will UTI pay the balance of the claim? If your answer is no, explain your answer (including references to any facts, documents, supporting law, rules, statutes, or orders).
30. If the insurance held by the TCP Holder providing the Uber Service is either insufficient or unavailable to pay a claim made against the TCP Holder by a passenger, pedestrian, or driver of another vehicle, will Uber

USA pay the balance of the claim? If your answer is no, explain your answer (including references to any facts, documents, supporting law, rules, statutes, or orders).

31. Produce the most current version of the Uber USA Software License and Online Services Agreement.

(END OF ATTACHMENT A)