



**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  
(Filed December 12, 2012)

**RESPONSE OF TECHNET AND INTERNET ASSOCIATION TO  
HOPSKIPDRIVE, INC., LYFT, INC., AND UBER TECHNOLOGIES, INC.,  
MOTION FOR CLARIFICATION OF SECOND AMENDED PHASE III. C.  
SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

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July 14, 2020

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**I. Introduction**

Pursuant to Rule 11.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“RPP” or “Rules”), TechNet and Internet Association submit the following motion for clarification on the June 9<sup>th</sup>, 2020 Second Amended Phase III. C. Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”).

TechNet and Internet Association appreciate the opportunity to seek clarification on the Commission’s Scoping Memo. TechNet and Internet Association share the Commission’s vision of bettering the lives of all Californians by implementing public policies that promote innovation in California’s transportation services. For that reason, we support the Motion filed by Hopskipdrive Inc.; Lyft Inc; and Uber Technologies Inc requesting the CPUC clarify that the presumption made in this Scoping Memo that drivers who use

Transportation Network Company (TNC) platforms are employees does not reflect any determination of AB 5 application to TNC drivers. In fact, the Scoping Memo's statement that TNC drivers are presumed to be employees is both legally erroneous and outside the scope of the proceeding. As organizations representing a wide spectrum of technology companies, we are concerned that without additional clarification to the Scoping Memo it may be misinterpreted as a decision on driver employment status. Any determination on driver employment status must instead be made by the designated authorities and in strict adherence to the processes set out in statute.

## **II. TechNet and IA's Opening Comments on Scoping Memo**

### **A. The Scoping Memo asserts that "TNC drivers are presumed to be employees" without having established the basis for this presumption, as required by AB 5.**

Whether or not TNCs are considered "hiring entities" has not yet been settled. According to some of the state's leading TNCs, drivers use the services provided by marketplace technology platforms where they are connected to and may subsequently provide services to riders. In a number of pending cases on this issue, noted in the Scoping Memo, TNCs will have the opportunity to address this definition. Until the matter of TNCs as hiring entities is resolved, the applicability of AB 5 to TNCs remains in question. AB 5 states that "a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates" that certain conditions are satisfied. Even if TNCs are determined to be hiring entities, they are entitled to demonstrate that drivers are independent contractors before the proper adjudicatory bodies.

Moreover, AB 5's constitutionality is being litigated in multiple federal courts. In addition, Proposition 22, the Protect App-Based Drivers & Services Act, will go before California voters in November and if passed would exclude all app-based drivers from AB 5. Given these ongoing actions, and since no proceeding under this

Commission or elsewhere has come to a conclusion on TNC driver employment classification under AB 5, any finding made by the Commission that TNC drivers are presumed to be employees lacks grounding in the verification process required by AB 5.

**B. The Commission lacks the authority to determine driver classification. Such a determination shall be made through a judicial process, as outlined in AB 5.**

The authority to determine the employment status of TNCs lies outside of the Commission's jurisdiction as such interpretations are appropriately considered and determined through judicial processes. This is of particular importance when it comes to newer technology platform-based business models that have emerged through innovation in the transportation space, where questions of employment classification are often highly-disputed and controversial. The introduction of online marketplace platforms disrupts the traditional relationship between drivers and passengers in the transportation space.

AB 5 designates the Attorney General and specified city attorneys – not the Commission – as the decision-making authority on questions of employment classification. Without clarification that the Scoping Memo may not determine that TNCs are employers under AB 5, the Commission is overstepping its authority on this matter and inadvertently setting a precedent of resolving issues beyond its mandate and expertise.

**C. Making determinations on driver classification is beyond the scope of this proceeding.**

In the April 2013 Decision 13-09-045, the Commission decided that driver classification would not be addressed in this rulemaking. This decision reinforces the Commission's focus on public safety rather than on investigating TNC business models. Even after AB 5 was enacted into law, the December 2019 ALJ ruling did

not seek to change the scope of the Amended Phase III. C. to include TNC employment classification. The presumption of TNC employment status in the June 9, 2020 Scoping Memo, then, is outside both the scope of this proceeding as well as the scope of the Commission.

The purpose of a Scoping Memo is to describe the issues to be considered in a proceeding and the timetable for resolving the proceeding. Any resolution of contested issues, including employment classification, falls outside of the Scoping Memo's intended function. This Scoping Memo states that "the presence of ... lawsuits and ballot measure does not mean that the Commission can abdicate its regulatory responsibility over TNCs." Technet and Internet Association agree that the Commission is tasked with continuing to assume its regulatory responsibility over TNCs. TNC employer classification under AB 5, however, is an ongoing, unresolved process moving forward outside the scope of both the Scoping Memo and the Commission.

Accordingly, the two questions posed in Sections 3.2(A) and 3.2(B) of the Scoping Memo in their current wording are also outside the scope of this proceeding, as the questions presume TNC employment status based on AB 5.

### **III. Conclusion**

TechNet and Internet Association share the Commission's vision of bettering the lives of all Californians through recognized leadership in implementing public policies that promote innovation in California's transportation services. We respectfully request that the assigned Commissioner clarify that the Scoping Memo does not determine that drivers who use TNC platforms are employees. The question of TNC employment classification is unresolved and reaching such a finding is outside the scope of this proceeding and of the Commission's assigned authority. California is home to some of the world's most innovative technology companies, with policy and regulations adapting to rapidly-changing business and consumer realities. A judicious approach to the contentious issue of TNC

employment classification is vital to ensuring the legally sound implementation of transportation solutions that will better the lives of all Californians.

Dated: July 14, 2020

Respectfully submitted,

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