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**Ratesetting**

March 24, 2023

TO PARTIES OF RECORD IN APPLICATION 22-01-017:

This is the proposed decision of Administrative Law Judge Robert M. Mason III. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 27, 2023, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mef

Attachment

Decision PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE  
ROBERT M. MASON III Mailed on (3/24/2023)

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

Application of Uber Technologies, Inc.  
(TCP 38150) to Provide High-Capacity  
Vehicle Service.

Application 22-01-017

**DECISION GRANTING UBER TECHNOLOGIES INC.'S  
APPLICATION TO PROVIDE HIGH-CAPACITY VEHICLE SERVICE**

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**DECISION GRANTING UBER TECHNOLOGIES INC.'S  
APPLICATION TO PROVIDE HIGH-CAPACITY VEHICLE SERVICE**

**Summary**

The Commission finds that Uber Technologies, Inc.'s (Uber) proposed high-capacity vehicle (HCV) and high-capacity vehicle service should be regulated under Uber's existing charter party carrier permit.

The Commission also finds that Uber's involvement in facilitating this high-capacity vehicle service should not make Uber a prime carrier. Though we find that Uber is not a prime carrier in this instance, we impose certain supervisory and reporting requirements on Uber to ensure that the charter-party carriers, with whom Uber will engage with to provide the high-capacity vehicle service, perform their service in conformity with our rules for charter party carrier (TCP) service set forth in General Order 157-E.

Application 22-01-017 is closed.

**1. Background**

**1.1. Factual Background**

On January 28, 2022, Uber filed an application for approval to provide a high-capacity vehicle (HCV) service product, which Uber characterizes as a "pure technology service,"<sup>1</sup> and for the Commission to regulate the HCV service pursuant to Uber's existing TCP authority which the Commission issued on August 12, 2021.<sup>2</sup> According to Uber, its HCV product acts as a technology layer between business clients and fleet operators of high-capacity vehicles to facilitate employee commuting needs as more employees return to work following the pandemic. If approved, the business model will allow businesses to determine

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<sup>1</sup> Application, 2.

<sup>2</sup> TCP CLASS A CERTIFICATE - TCP38150

the scope of HCV services they require and designate the specific employee passengers eligible to access those services, and the Commission-regulated fleet operators that possess valid TCP permits will deliver the service, provide vehicles, and employ and manage the drivers. In other words, Uber's HCV product will provide these businesses and the fleet operators they contract with the technology via the Uber app to make those operations more efficient and attractive to an employer's commuting workforce.

Before proceeding with Uber's application, a point of clarification is in order about HCV service and HCV product. We note that Uber's application refers to HCV service and HCV product interchangeably. Uber's prehearing conference (PHC) statement states: "The HCV product is also distinct from other products in that each rider who has access to the HCV product in-app..." and then states in the following sentence: "Typically, the customer will pay for the HCV service option to be available to the rider."<sup>3</sup> For clarity, we will refer to Uber's software application as the HCV product, in contrast to Uber's UCV service, which also includes the transportation of passengers.

Uber also states in this application that the HCV service is not a public riding service. Instead, employees of businesses who subscribe to the Uber HCV service will be able to book a ride on a vehicle operated by a carrier that contracts with an employer. To board, the riders must present their booking confirmation in the app to the driver who will validate the employee/riders' credentials. Once on board, riders will be able to track and share their trip progress and estimated time of arrival through the Uber app.

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<sup>3</sup> Uber's PHC Statement, 7.

Additionally, Uber's application uses terminology specific to the marketing of its product. For example, the term "high-capacity vehicle" is undefined and is not limited to any vehicles of a specific seating capacity. In contrast, California offers a definition of the term "bus" which refers to "a vehicle designed, used, or maintained for carrying more than ten persons, including the driver, which is used to transport persons for compensation or profit..."<sup>4</sup>

Finally, while Uber refers to its HCV service as a technology service, it nonetheless recognizes the Commission's authority to regulate commercial activities engaged in the provision of transportation by motor vehicle.

No protests have been filed.

## **1.2. Procedural Background**

A PHC was held on March 28, 2022, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. Uber filed a *Prehearing Conference Statement* on March 22, 2022.

Despite the absence of any protests, this has been a complicated Application for the Commission to resolve. Considering the exchange of information and comments made at the PHC, the uncertainty surrounding Uber's level of control over the transportation service, and whether Uber should be considered a prime carrier subject to General Order 157-E, on April 20, 2022, the assigned Administrative Law Judge (ALJ) issued a *Ruling Directing Applicant to Respond to Additional Inquiry*. Uber filed its Response on May 4, 2022. The 25 questions and Uber's responses are set forth below:

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<sup>4</sup> California Vehicle Code § 233(b).

1. If Uber controls access from the customers and riders to use the Operator of HCV and HCV services, how is Uber's role not a "primary carrier"?
- Response: Uber does not control either arrangement or dispatch of the transportation. Business customer controls and arranges riders' access to the HCV product.<sup>5</sup>
2. What constitutes an HCV vehicle for the HCV service?
- Response: The HCV service is designed to incentivize employers to select the most cost-effective vehicle based on employee demand.<sup>6</sup>
3. How is an HCV Operator distinguished from operators for other services offered by Uber?
- Response: HCV service will be a relatively limited group of larger, more established companies with experience operating HCVs who will be held to robust compliance expectations.<sup>7</sup>
4. If the vehicles under the HCV service does not have seating capacity requirement, as stated during PHC, what makes it "high capacity"?
- Response: Preselected group of individuals to pre-arrange rides on the same vehicle that is traveling to a set destination. Seating capacity minibus (14-20 seats) to a coach bus (50+ seats).<sup>8</sup>
5. How will Uber suspend or block HCV Operators or individual drivers from providing the HCV service to customers, if Uber does not exercise any control over the Operators or drivers under the HCV service?
- Response: Uber will require each Operator selected by the business customer to verify that it holds a valid and active TCP license, and Uber will suspend and block use of its

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<sup>5</sup> Uber's Response, 1.

<sup>6</sup> Uber's Response, 2.

<sup>7</sup> Uber's Response, 2.

<sup>8</sup> Uber's Response, 2 and 3.

HCV product (*i.e.*, use of the Uber-provided technology layer) if it becomes aware of an Operator's non-compliance with Commission requirements. Also, drivers can be blocked from offering HCV trips upon request of the business customer, Operator, or Uber.<sup>9</sup>

6. If Uber does not exercise any control over the Operator, how can Uber ensure that drivers previously suspended from Uber's other services are not driving for an HCV Operator?

- Response: As a condition for providing its technology layer, Uber will work to ensure that drivers permanently suspended from offering trips through its other products will not have access to the Uber platform, including the HCV product.<sup>10</sup>

7. How will the Uber app be used by drivers in advance of trips and during trips in relation to providing HCV service?

- Response: Drivers can use the Uber app to view their upcoming Operator-assigned schedules (*i.e.*, routes and departure times). The driver logs into the app, confirms the vehicle they will be driving then taps to "GO". Drivers can also use the Uber app to see trip information such as stops, journey times, and progress alerts.<sup>11</sup>

8. If Operators and/or customers do not accept Uber's recommendations, including but not limited to routes, stops, vehicles, or drivers, how will Uber ensure the safety of riders?

- Response: Uber ensures the safety of riders by confirming each Operator holds a valid, active TCP license, and by contractually requiring each proposed Operator meet all regulatory requirements applicable to TCPs before selecting them as an Operator. Uber will provide riders

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<sup>9</sup> Uber's Response, 3.

<sup>10</sup> Uber's Response, 3.

<sup>11</sup> Uber's Response, 4.



- with a mechanism to report safety-related concerns and make available other safety features, including in-app visibility of the shuttle's route, display of driver information, Share My Trip, Trusted Contacts, and Emergency Assistance.<sup>12</sup>
9. Provide documents of any action taken by Uber to ensure implementation and enforcement of its written policies and procedures to ensure that drivers, who were previously suspended by Uber or the Commission, will not drive for an Operator under the HCV service.
- Response: There are no records of documented instances where Uber suspended, blocked, or refused to contract with a business customer or Operator who wished to use a driver previously suspended by Uber or the Commission.<sup>13</sup>
10. How are Uber's recommendations to Operators and/or customers reflected in the Uber App?
- Response: Uber will make recommendations on routes, pick-up/drop-off locations, schedules and vehicle assignments. Uber App for use by riders and drivers.<sup>14</sup> (Uber's Response, 5)
11. How are changes in routes, stops, vehicles, and drivers reflected in the Uber App?
- Response: These changes are automatically reflected in the Uber app. Uber app will track location, timing, service delays or schedule changes, trip progress, route changes and estimated time of arrival.<sup>15</sup>
12. What tasks are the sole responsibility of the Operator and customer to negotiate and determine without any recommendations or involvement from Uber?

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<sup>12</sup> Uber's Response, 4.

<sup>13</sup> Uber's Response, 4 and 5.

<sup>14</sup> Uber's Response, 5.

<sup>15</sup> Uber's Response, 5.

-Response: Operators are responsible for employing and managing drivers, creating and managing schedules, and managing the vehicles, which of its vehicles to assign, and which of its drivers to staff on which routes, set the price they will charge a business customer. Operator and the business customer jointly determine eligible riders. Uber exercises no control over the Operator or business customers' decisions.<sup>16</sup>

13. Will riders have a choice of HCV Operators to choose from?

-Response: HCV riders will only have access to the specific Operator(s) chosen by the business customer (*e.g.*, the rider's employer).<sup>17</sup>

14. How will payment be handled between the Operator, Uber, and the customer?

-Response: Uber will negotiate a technology service fee with its business customer (or potentially the Operator) purchases from Uber.<sup>18</sup>

15. Is the customer able to contract with any licensed Operator, even if the Operator has not been selected by Uber?

-Response: The business customer may select any TCP-licensed and CPUC-regulated Operator so long as it meets certain requirements to operate on the Uber platform per agreed upon terms.<sup>19</sup>

16. Does Uber participate in the determination of the price that Operators will charge a customer?

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<sup>16</sup> Uber's Response, 5 and 6.

<sup>17</sup> Uber's Response, 6.

<sup>18</sup> Uber's Response, 6.

<sup>19</sup> Uber's Response, 6.

-Response: No. Operators (not Uber) set the price they will charge a business customer for providing the actual transportation service.<sup>20</sup>

17. Does Uber receive any compensation for referring Operators to existing or future customers?

-Response: No. Uber does not receive a commission for referring Operator.<sup>21</sup>

18. How are the fees charged to each customer and Operator calculated?

- Response: Uber will negotiate a one-time launch fee and a periodic technology service fee with its business customer.<sup>22</sup>

19. Will customers have an option to charge riders to use the Uber HCV service?

- Response: Yes. Business customers determine how riders will be charged for the HCV Service, but Uber will not collect a fee from any rider for use of the service.<sup>23</sup>

20. Identify the step-by-step procedures Uber will take to ensure that each Operator has a valid TCP permit or certificate?

Response:

- a. Uber will confirm that each Operator seeking to partner with Uber to deliver the has a valid TCP permit or certificate maintained by the CPUC - Transportation Licensing and Analysis Branch (TLAB).

b. Uber will cross-reference each presented TCP permit's listed business owner and officer information against public records maintained by the California Secretary of State to determine its validity.

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<sup>20</sup> Uber's Response, 7.

<sup>21</sup> Uber's Response, 7.

<sup>22</sup> Uber's Response, 7.

<sup>23</sup> Uber's Response, 7.

- c. Uber will monitor the current status of the TCP permits of each Operator by reviewing the list that TLAB, which reflects the active or suspended status of each TCP license.<sup>24</sup>
21. How would the HCV vehicle, as opposed to other vehicles under a different Uber service, be identified in the Uber app?
- Response: The HCV service would be accessible under a separate product icon which will appear as a coach-style shuttle, accessible only to rider-employees approved by the business customer. The HCV product will also appear in the product selector if an eligible rider inputs a pick-up and drop-off location with sufficient proximity to one of the preselected HCV routes.<sup>25</sup>
22. Under what heading (*e.g.*, Popular, Economy, Premium, More, etc.) would HCV service be listed?
- Response: Uber has not yet determined a consumer-facing product name or “heading” for the HCV service.<sup>26</sup>
23. Will the HCV service include vehicles enrolled in a local government commuter shuttle program near the rider’s location be included in the HCV service?
- Response: HCV service will only utilize vehicles offered by carriers with TCP licenses and also vehicles enrolled in a local government commuter shuttle program.<sup>27</sup>
24. Will HCV service riders and drivers be able to issue ratings to each other? If so, how would that information be used? What would Uber do if a driver’s or passenger’s non-safety related ratings were too low?
- Response: The Uber app will allow riders to provide any feedback and concerns by rating their trip after it is

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<sup>24</sup> Uber’s Response, 7 and 8.

<sup>25</sup> Uber’s Response, 8.

<sup>26</sup> Uber’s Response, 9.

<sup>27</sup> Uber’s Response, 9.

completed if the business customer chooses to maintain this feature. Drivers will not be able to rate riders.<sup>28</sup>

25. What policies and procedures will be different in the operation of the HCV service than the Uber Black and Uber X services to ensure compliance with the statutes and regulations required under the Commission?

- Response: Uber takes steps to ensure that its TCP subcarriers possess valid TCP permits issued by the Commission. Uber will respond to compliance concerns following the same protocols as it does for any of its Commission-regulated products, including investigating those concerns and, if a violation is found, taking appropriate steps to ensure the carrier is not able to provide HCV trips.<sup>29</sup>

Following the receipt of Uber's responses, the *Scoping Memo* was issued on August 15, 2022, which stated that the matter was submitted as of the date of the *Scoping Memo*.

## 2. Jurisdiction

Despite Uber's assertion that its HCV service is a "pure technology service," the service is designed to facilitate transportation, and the Commission has the authority to regulate commercial activities engaged in the provision of transportation by motor vehicle.<sup>30</sup> Even a company that characterizes itself as a

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<sup>28</sup> Uber's Response, 9.

<sup>29</sup> Uber's Response, 9 and 10.

<sup>30</sup> Pub. Util. Code § 5360 states:

Subject to the exclusions of [Section 5353](#), "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. "Charter-party carrier of passengers" includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver."

Pub. Util. Code § 5360.5 states:

*Footnote continued on next page.*

technology provider engages in a TCP service if it is, in any respect, involved in a TCP activity including facilitation.<sup>31</sup> Finally, this is not the first instance where the Commission has exercised its jurisdiction to opine if a company helps to facilitate a transportation service in a middleman capacity (for example, by acting as a transportation broker) should be characterized as a TCP.<sup>32</sup> Thus, it is incumbent on the Commission, in exercising its duty to ensure the safety of the services it regulates, to scrutinize those who may be engaged in the transportation service to determine what level of regulatory oversight is appropriate.

### **3. Issues Before the Commission**

The Scoping Memo identified the following issues to be determined:

1. In offering HCV and HCV services, should Uber be considered a prime carrier? If so, what regulatory requirements should be imposed?
2. Should an HCV be defined to include a minimum number of seats?
3. Should an HCV be defined to include a maximum number of seats?

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(a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.

(b) For purposes of this section, “prearranged basis” means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

<sup>31</sup> Decision 18-04-005 (*Decision on Phase III.B. Tracks II and IV Issues: Is Uber Technologies, Inc., a Transportation Network Company and/or a Charter Party Carrier*).

<sup>32</sup> See Decision 93-06-034, \*9, in Application 92-09-015 (In the Matter of the Application of Golden Bay Tour Company, dba Tower Tours agency, for charter-party authority or an exemption therefrom) in which the Commission found that “Tower’s operations are generally not those of a TCP but are in fact those of a broker or agent.”

4. What degree of control, if any, should Uber be required to exercise over HCV operators or individual drivers from providing the HCV service to customers?
5. What protocols should Uber be required to follow to ensure the safety of HCV service riders?
6. The applicability of and compliance with the following statutes, regulations, and General Orders: the DMV Employer Pull Notice Program (Pub. Util. Code Sections 5374(a)(1)(D), General Order 157-E, Part 5.02, California Vehicle Code Section 1808.1); the Controlled Substance and Alcohol Testing Certification Program (Pub. Util. Code Section 5374(a)(1)(I), and General Order 157-E, Part 10); Reporting of vehicles in use and Equipment Statements (General Order 157-E, Part 4.01); Prohibition against the sharing of TCP permits and operated vehicles (General Order 157-E, Part 4.09); Personal liability and property damage insurance requirements (Pub. Util. Code Section 5392 and General Order 115-G); Workers' compensation insurance requirements (Pub. Util. Code Section 5378.1); and reporting of PUC Transportation Reimbursement Account (PUCTRA) revenue (Pub. Util. Code Sections 421, 423, and 5378(a)(9).)
7. Impacts on environmental and social justice communities, including the extent to which Uber's HCV and HCV services impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

#### **4. Discussion and Analysis**

##### **4.1. In Offering HCV Product and HCV Services, Should Uber be Considered a Prime Carrier?**

With this Application, the Commission is tasked with first identifying the parameters of a prime carrier/ sub-carrier TCP contractual relationship and then determining whether Uber's intended offering of HCV and HCV services qualifies Uber as a prime carrier. Answering these questions is not as straightforward as it may appear since the term "prime carrier," while commonly used

in Commission parlance, is not defined by either the Public Utilities Code, Commission decisions, or Commission regulations. The term appears in several old Commission publications that define a prime carrier as “A certificated or permitted motor carrier that engages other carriers or subhaulers.<sup>33</sup> The term “subcarrier” is not defined but its relationship with a prime carrier is described in Decision 96-08-034, 20: “In charter-party subcarrier, the driver and van are hired by and provide service to the PSC [passenger stage corporation] (here, Prime Time), not the passenger. The passenger’s agreement is with Prime Time, which is responsible for providing the service to the passenger.” Thus, the Commission uses the term prime carrier to identify the entity on whose behalf that another passenger transportation entity, known as the “sub-carrier,” is working to provide transportation services in California. In essence, the prime carrier acts as both a middleman between passengers and the sub-carriers that transport the passengers and exercises a level of control over how rides are arranged and how fares are charged and collected. While those considered to be a prime carrier may own and operate its own vehicles, such ownership is not a prerequisite for prime carrier status.<sup>34</sup> For example, in Uber’s case, the Commission has previously found that Uber was a both a Transportation Network Company and TCP because of the level of management and control it exercised over the operation, even though it did not own the vehicles in which passengers subscribing to the Uber app were being matched with for transport.<sup>35</sup>

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<sup>33</sup> *How the California Public Utilities Commission Regulates Public Utilities and Transportation Companies* (October 1987), 46; and *California Public Utilities Commission Dictionary of Acronyms and Frequently Used Terms* (1992), 44.

<sup>34</sup> D.96-08-034, 22-23.

<sup>35</sup> See Decision 18-04-005 (*Decision on Phase III.B. Tracks II and IV Issues: Is Uber Technologies, Inc., a Transportation network Company and/or a Charter Party Carrier*). We note that Uber has acted as a  
*Footnote continued on next page.*



To understand what a prime carrier is, it is necessary to examine that term in connection with what is a TCP and what it means to be classified as a sub-carrier. As we noted above, and subject to the exclusions in Publ. Util. Code § 5353, Pub. Util. Code § 5360 has four components to be considered a TCP: (1) a person engaged in the transportation of persons; (2) by motor vehicle; (3) for compensation (*i.e.*, setting the fare or rates based on mileage and/or time of use); and (4) over any public highway in this state. Next, we consider the definition of sub-carrier which requires us to examine General Order 157-E (Rules and Regulations Governing the Operations of Charter-Party Carriers of Passengers). Part 3.04 defines sub-carrier as follows:

A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter party carrier. The agreement for the utilization of the second carrier's vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carriers' names, TCP numbers, and the services to be provided.

To be a lawfully operating sub-carrier, that entity must meet the definition of a TCP and possess a TCP permit. The “carrier” in Part 3.04 that contracts to utilize the services of a sub-carrier would be the prime carrier who must also possess a valid TCP permit. That is because pursuant to Part 2.02 of General Order 157-E, “the word ‘carrier’ means charter-party carrier of passengers.” Thus, both the prime carrier and the sub-carrier must meet the

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prime carrier for its “Uber Black” product because Uber receives the requests from passengers, sets the rates charged for trips, and dispatches the trip requests to subcarriers who are other TCP carriers. Under the Commission regulations, both Uber and its subcarriers are required to possess TCP permits to lawfully carry out this business arrangement in California.

definition of a TCP and possess operational TCP permits even though in this business arrangement it is only the sub-carrier that transports the passenger.

Based on the law, as well as our review of the application and Uber's response to our questions, we conclude that Uber does not fit within the concept of a prime carrier for the following reasons. First, Uber does not charter the HCV service. As Uber points out, the customer may select and enter into the contract with a TCP of its choice for the HCV service: "Unlike some of the other products Uber offers, the business customer, not Uber, ultimately selects the Operator to provide HCV service."<sup>36</sup> While Uber does provide the software to facilitate the service, the potential business customers and participating TCP carriers would use the software to manage trip arrangements such as scheduling driver shifts, providing route information, and can use the app's safety features in order to report any safety concerns.

Second, Uber does not set or negotiate the fare to charge customers for HCV service. This will be done by the subscribing business customers:

Business customers determine how riders will be charged for the HCV service, if at all. Uber anticipates that most business customers will not charge riders to provide an employee benefit intended as a retention and productivity tool. If asked by a business customer, Uber could facilitate payments from a rider-employee to a business customer-employer, but Uber will not collect a fee from any rider for use of the service.<sup>37</sup>

Clearly, Uber is not a nonprofit corporation, therefore Uber must be expecting some form of compensation for introducing this HCV into the market. As Uber explains, rather than charge for individual rides, Uber states it will

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<sup>36</sup> Response, 2.

<sup>37</sup> Response, 7.

collect a monthly technology fee from the business customer that contracts for the HCV service or the HCV operator:

Uber will negotiate a technology service fee, usually a monthly charge, with its business customer (or potentially an Operator) that will take into account the range and complexity of services that the business customer (or potentially the Operator) purchases from Uber. Though the payment between the customer and the Operator will be independently negotiated and determined, Uber can also facilitate that payment, if requested.<sup>38</sup>

Since Uber is removed from the fee-setting process, we view this financial arrangement that Uber will have with its business customer or operator as distinguishable from the traditional TCP and passenger arrangement in which the TCP sets the financial terms for the transportation since Uber is removed from the fee-setting process.

Third, Uber does not plan to be responsible for the compliance requirements of the HCV operators. Uber explains that as it is assuming the role of facilitator and not controlling the HCV services, it would not be responsible for fulfilling obligations attributed to prime carriers on behalf of their sub-carriers, such as reporting revenue and remitting associated use fees, or possessing public liability and property damage insurance sufficient to cover the operations of all its sub-carriers' vehicles. Each HCV operator that Uber contracts with will be responsible for fulfilling those operational obligations.

In sum, the Commission concludes that in offering the HCV and HCV services, Uber is not performing the role of a prime carrier.

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<sup>38</sup> Response, 6.

#### **4.2. Do Uber's HCV Product and HCV Services Fall Within Uber's TCP Authority?**

Finding that Uber is not operating as a prime carrier in this instance does not end the Commission's inquiry into Uber's Application. The Commission must also determine if the HCV product and HVC services may properly be offered as part of Uber's existing TCP authority. Given the factual circumstances presented in this Application, we answer that determination in the affirmative. The HCV product and HCV services enable riders to select a private chartered transportation, not available to the general public, and on a prearranged basis. As such, Uber's current TCP permit covers operators of HCVs with whom Uber intends to enter into contracts with for HCV services.

#### **4.3. HCV Service Capacity**

The Commission declines to impose a strict minimum or maximum number of seat requirements for a vehicle to qualify as an HCV. Uber requests that the business customer and its chosen HCV operator have the flexibility to select the size of the vehicle for the customer's needs. Uber points out that the seating capacity is flexible and can range from what is commonly called a minibus (14-20 seats) to a coach bus (50+) seats. Thus, we believe it to be in the best interests of the business customer to determine the size of the HCV needed without having to wonder if selected size constitutes an HCV or some other mode of transportation.

#### **4.4. Uber's Degree of Control Over HCV Operations to Promote Rider Safety**

As Uber is not a passive participant in the HCV service that it is asking the Commission to authorize, we must next address the level of control that Uber should be ordered to exercise so that the HCV services are provided in a manner consistent with the Commission's safety requirements for TCPs: First, Uber

should be required to verify that each HCV operator selected by the business customer possesses a valid and active TCP permit and is in compliance with the requirements set forth below in section 4.5 of this decision. Second, Uber should be required to suspend and block the use of HCV service if it becomes aware of an HCV operator's non-compliance with Commission requirements for TCP providers. Third, for good cause shown, Uber should block drivers from offering HCV trips upon the request of the customer, HCV operator, or Uber. Fourth, Uber should be required to provide HCV riders with, at a minimum, the ability to report safety-related concerns and to include in-app visibility of the HCV's route, display of driver information, and emergency assistance. Finally, it is incumbent that Uber ensure that the carriers using its HCV product hold an active authority from the Commission to transport passengers. Such a requirement is consistent with the spirit of Pub. Util. Code § 5411 which prohibits TCPs from procuring, aiding, or abetting other TCPs in failing to obey or comply with the operating requirements for TCPs.

#### **4.5. HCV Carrier Compliance with TCP Regulations**

As each HCV carrier must possess a TCP permit, it will be incumbent on each HCV carrier to comply with the follow statutes, regulations, and General Orders:

<b>Subject</b>	<b>Authority</b>
Department of Motor Vehicles Employer Pull Notice Program	Pub. Util. Code Section 5374(a)(1)(D); General Order 157-E, Part 5.02; California Vehicle Code Section 1808.1
Controlled Substance and Alcohol Testing Certification Program	Pub. Util. Code Section 5374(a)(1)(I), and General Order 157-E, Part 10
Reporting of vehicles in use and Equipment Statements	General Order 157-E, Part 4.01;

	Prohibition against the sharing of TCP permits and operated vehicles (General Order 157-E, Part 4.09)
Personal liability and property damage insurance requirements	Pub. Util. Code Section 5392 and General Order 115-G
Workers' compensation insurance requirements	Pub. Util. Code Section 5378.1
Reporting of PUC Transportation Reimbursement Account (PUCTRA) revenue	Pub. Util. Code Sections 421, 423, and 5378(a)(9)

#### **4.6. Impact of HCV Product and HCV Services on Environmental and Social Justice Communities**

As part of its mission to regulate essential utility services to protect consumers and safeguard the environment, assuring safe and reliable access to all Californians, the Commission created the Environmental and Social Justice (ESJ) Action Plan to serve as both a commitment to furthering ESJ principles, as well as an operating framework with which to integrate ESJ considerations throughout the agency's work. One of the goals of the ESJ Action Plan is to ensure the availability of transportation services for Environmental and Social Justice Communities, which are defined as follows:

[P]redominately communities of color or low-income communities that are underrepresented in the policy setting or decision-making process, subject to a disproportionate impact from one or more environmental hazards, and are likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities.<sup>39</sup>

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<sup>39</sup> CPUC ESJ Action Plan 1.0.

In furtherance of the ESJ Action Plan's objectives, we must consider the impact of HCV product and HCV services on Environmental and Social Justice Communities.

Uber claims that approving this Application will allow Uber to offer a service that will be consistent with the ESJ Action Plan and offers the following explanation:

Uber believes that approval of the HCV application will result in improved access to high-quality transportation services to ESJ communities (Goal 3 of the ESJ Action Plan 2.0) and promote economic opportunity for residents of ESJ communities (Revised Goal 7 of the ESJ Action Plan 2.0) by allowing more employers to successfully offer high quality, environmentally friendly, and convenient commute solutions to potential employees living in ESJ communities. This service could potentially remove a significant barrier for residents of ESJ communities from accessing high quality economic opportunities with employers that are otherwise inaccessible for those individuals with limited transportation options. Furthermore, even for those ESJ community members who do not come to use the HCV service, by potentially reducing the number of single-occupancy or low-occupancy vehicles on the road during peak commute hours and replacing them with high-capacity vehicles, approval of this application should also reduce emissions and vehicle traffic in heavy commuter corridors along freeways and major thoroughfares more likely to be populated by ESJ community members.<sup>40</sup>

Thus, Uber sees the potential benefits as two-fold: first, its HCV and HCV services might directly benefit Environmental and Social Justice Communities if their residents are able to avail themselves of this service. Second, even if the residents do not use the service, there is an overall societal benefit to reducing

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<sup>40</sup> Uber's PHC Statement, 8.

the number of vehicles on the road which would lead to a reduction in traffic congestion and emissions.

As Uber's HCV product and HCV services have not yet been implemented, it is too soon for the Commission to evaluate if the HCV services will be offered to riders in Environmental and Social Justice Communities. Uber's Application does not identify the prospective businesses that might take advantage of the HCV services, so we do not know, at present, if any of the employees of these companies reside in Environmental and Social Justice Communities. Since this is an ongoing concern for the Commission, we will require Uber to report on the availability and impact of HCV services on Environmental and Social Justice Communities.

#### **5. Summary of Public Comment**

Rule 1.18 of the Commission's Rules of Practice and Procedure allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

As this is an unopposed matter, there have not been any public comments.

#### **6. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge Mason in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.



## **7. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Uber's HCV product acts as an interface between business clients and fleet operators of high-capacity vehicles.
2. Uber's HCV service is the actual transportation of passengers facilitated by Uber's HCV product.
3. Uber's HCV service is not offered to the general public. To board, a confirmed rider must present their booking confirmation in the app to the HCV driver who will validate the rider's credentials.
4. The purpose behind Uber's HCV product is to facilitate employee commuting needs.
5. The HCV operators that Uber intends to enter into contractual relationships with are TCPs with active TCP Permits.
6. Uber will not charge the riders of the HCVs.
7. Uber will receive compensation from a bilaterally negotiated service fee from its business clients or HCV operators for providing HCV services.
8. Uber will not make the ultimate decisions regarding a High-Capacity Vehicle (HCV) service's route selection, schedule, or riders authorized to use the HCV service. These decisions will be made by the business clients who wish to utilize the HCV services.

### **Conclusions of Law**

1. It is reasonable to conclude that in offering its High-Capacity Vehicle (HCV) product and HCV service, Uber is functioning as a charter party carrier.

2. It is reasonable to conclude that the High-Capacity Vehicle (HCV) Operators that Uber intends to contract with to provide HCV services are sub-carrier charter party carriers.

3. It is reasonable to conclude that Uber Technologies, Inc.'s role in this contractual relationship with High-Capacity Vehicle Operators is not that of a prime carrier.

4. It is reasonable to conclude that a High-Capacity Vehicle need not have a minimum or maximum seating capacity.

5. It is reasonable to require Uber to monitor and confirm to the Commission that the High-Capacity Vehicle Operators it enters into agreement with satisfy the requirements to operate as a TCP in California.

6. It is reasonable to require Uber to monitor the High-Capacity Vehicle (HCV) service requests and report to the Commission regarding the impact of HCV services on Environmental and Social Justice Communities.

## **O R D E R**

**IT IS ORDERED** that:

1. Uber Technologies, Inc.'s Application to provide high-capacity vehicle services is granted.

2. Uber Technologies, Inc.'s (Uber) provision of high-capacity vehicle services is authorized pursuant to Uber's currently active Charter-party Carrier Permit.

3. Uber Technologies, Inc. has an ongoing obligation to confirm that each high-capacity vehicle operator it contracts with has an active Charter-party Carrier Permit.

4. Uber Technologies, Inc. has an ongoing obligation to monitor the current status of the Charter-party Carrier permits of each high-capacity vehicle

operator by reviewing the list that the Commission's Transportation Licensing and Analysis Branch provides to Uber on a weekly basis.

5. Uber Technologies, Inc. has an ongoing obligation to confirm with each high-capacity vehicle operator it enters into contract with satisfies the applicable requirements for Charter-party Carriers to operate in California, namely: the DMV Employer Pull Notice Program Public Utilities (Pub. Util.) Code Sections 5374(a)(1)(D), General Order 157-E, Part 5.02, California Vehicle Code Section 1808.1); the Controlled Substance and Alcohol Testing Certification Program (Pub. Util. Code Section 5374(a)(1)(I), and General Order 157-E, Part 10); Reporting of vehicles in use and Equipment Statements (General Order 157-E, Part 4.01); Prohibition against the sharing of TCP permits and operated vehicles (General Order 157-E, Part 4.09); Personal liability and property damage insurance requirements (Pub. Util. Code Section 5392 and General Order 115-G); Workers' compensation insurance requirements (Pub. Util. Code Section 5378.1); and reporting of PUC Transportation Reimbursement Account (PUCTRA) revenue (Pub. Util. Code Sections 421, 423, and 5378(a)(9)) by ensuring that each carrier has an active TCP Permit or Certificate.

6. Uber Technologies, Inc. has an ongoing obligation to provide the names of each charter-party carrier it entered into contract with at the time that Uber submits its quarterly PUC Transportation Reimbursement Account revenue statements.

7. Uber Technologies, Inc. shall monitor and report annually on the impact of the high-capacity vehicle services on Environmental and Social Justice Communities. The annual report shall be submitted to the Commission on January 15 (or the next business day if January 15 falls on a Saturday or Sunday) for each year that the high-capacity vehicle service is operational.

8. Application 22-01-017 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California