

**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)

**APPLICATION OF UBER TECHNOLOGIES, INC.
FOR REHEARING OF DECISION 13-09-045**

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Uber Technologies, Inc. (“Uber”) respectfully requests rehearing of Decision 13-09-045, issued on September 23, 2013 (“Decision”). As described below, the Decision contains legal error – the Commission erroneously extends its public utility jurisdiction to encompass technology companies that do not provide regulated transportation service. Accordingly, the Commission should grant rehearing to resolve this legal error.

**I. THE COMMISSION COMMITS LEGAL ERROR BY ASSERTING
JURISDICTION OVER TECHNOLOGY COMPANIES THAT DO NOT
PROVIDE TRANSPORTATION SERVICES**

Absent a technology company, such as Uber, “fall[ing] within one of the enumerated classes of public utilities, the [C]ommission has no jurisdiction over it.”¹

Ample precedent establishes that the Commission “does not have jurisdiction over all matters that simply have some bearing upon regulated utilities.”² Moreover, the interpretation of a statute delineating the scope of the Commission’s public utility jurisdiction is “a judicial, not

¹ *Television Transmission, Inc. v. Pub. Util. Comm’n* (1956) 47 Cal. 2d 82, 85.

² *See, e.g., Thrifty-Tel, Inc., v. Bezenek* (1996) 46 Cal. App. 4th 1559, 1571 (*citing Masonite Corp. v. Pacific Gas & Electric Co.* (1976) 65 Cal. App. 3d 1, 7).

an . . . administrative, function,” and the Commission may not expand its jurisdiction, when as here, “the wording of the statute . . . clearly calls for a different construction.”³

Public Utilities Code section 5360 defines a “charter-party carrier,” subject to the Commission’s public utility jurisdiction, as “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.”⁴ Yet, notwithstanding the plain language of section 5360, the Decision expands the definition of a charter-party carrier beyond those “engaged in the transportation of persons” to capture technology companies that develop software that allow a user to simply *procure* transportation service from a licensed TCP holder or a future TNC holder:

It is reasonable to exercise this Commission’s broad grant of authority pursuant to PU Codes §§ 5381 and 701 to create the category of TNC to accompany the existing category of TCP. A company or individual wishing to provide transportation or facilitate transportation of passengers can choose to either get a TCP license or a TNC permit.⁵

Sections 5381 and 701, however do not provide the Commission with as “broad [a] grant of authority” as the Decision asserts.⁶ Specifically, section 5381 provides that the Commission “may supervise and regulate every charter-party carrier of passengers in the State.” Thus, under section 5360, the Commission’s jurisdiction extends only to persons actually “engaged in the transportation of persons.”

³ *Golden Gate Scenic Steamship Lines, Inc. v. Pub. Util. Comm’n* (1962) 57 Cal. 2d 373, 377 at footnote 2 (citing *Johnston v. Board of Supervisors* (1947) 31 Cal. 2d 66, 74).

⁴ Emphasis added. Unless otherwise noted, all statutory references are to the California Public Utilities Code.

⁵ Decision, mimeo at 67 (Findings of Fact No. 17). The TCP category pertains to “livery” transportation service; whereas the TNC category pertains to peer-to-peer prearranged transportation service.

⁶ Decision, mimeo at 24.

Section 701 similarly permits the Commission to “supervise and regulate every public utility in the State” but does not bestow Commission jurisdiction over entities that are not otherwise among the “enumerated classes of public utilities.”⁷ In particular, entities that “facilitate transportation of passengers” are not an enumerated class of public utility.

The Commission also suggests in several places in the Decision that failing to assert jurisdiction over technology companies that develop Apps used to facilitate the provision of transportation service by TCP holders and future TNC holders will result in the “loss” of the Commission’s “jurisdiction over transportation services.”⁸ However, failing to expand the Commission’s jurisdiction to entities whose technology “facilitates transportation of passengers” in no way diminishes the Commission’s public utility jurisdiction over TCP holders and future TNC holders that do in fact provide transportation service. Rather, the Commission currently exercises jurisdiction over charter-party carriers, *i.e.*, TCPs, and will continue to do so by exercising jurisdiction over TNCs. Accordingly, the Commission commits legal error by asserting jurisdiction over technology companies that do not provide transportation services and are therefore not public utilities.

II. UBER IS A TECHNOLOGY COMPANY, DOES NOT PROVIDE TRANSPORTATION SERVICES, AND IS THUS NOT SUBJECT TO PUBLIC UTILITY JURISDICTION

The Commission’s public utility jurisdiction does not extend to technology companies, such as Uber, that develop software and mobile applications and provide no transportation

⁷ Specifically, section 701 provides that “The [C]ommission may supervise and regulate every *public utility* in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” (Emphasis added).

⁸ *See, e.g.*, Decision, mimeo at 13-14 (“[W]e do not believe that this Commission loses its jurisdiction over transportation services simply because a smart phone application is used to facilitate the transportation service;” and “We deem it inconsistent with our grant of authority over transportation services to be barred from regulating a transportation service provided by TNCs based on the means of communication used to arrange the service”).

services. In particular, Uber licenses a software application service (the “Uber App”) used by TCP holders and future TNC holders to generate leads for *these entities* to provide transportation services. Put another way, Uber’s technology simply connects the transportation service provider (over which the Commission exercises jurisdiction) with people who seek transportation services.

In *Re Golden Bay Tour Co. dba Tower Tours*, the Commission dismissed the application of Golden Bay Tour Company dba Tower Tours Agency (“Tower Tours Agency”) requesting authority to operate as a regulated charter-party carrier and to be regulated by the Commission as a public utility.⁹ The Commission concluded that the definition of a charter-party carrier in section 5360 does not extend to “[s]omeone who operates no vehicles, does not hold out nor advertise itself as a TCP, and does little more than book space and sell tickets for a TCP.”¹⁰

Similar to Tower Tours Agency, Uber should not be subject to jurisdiction as a charter-party carrier pursuant to section 5360. Uber operates no vehicles, and does not hold itself out or advertise itself as a transportation service provider. Unlike Tower Tours Agency, Uber does not even book space or sell tickets. In fact and law, Uber does not provide transportation services of any kind and does not own, lease or charter any vehicles for the transportation of passengers.¹¹ On the contrary, Uber is a technology company that licenses the Uber App to transportation

⁹ Decision 93-06-034, 1993 Cal. PUC LEXIS 474.

¹⁰ Decision 93-06-034, 1993 Cal. PUC LEXIS 474 at *10.

¹¹ uberX is also not a transportation service provider. uberX does not designate a specific transportation service, but rather it is one of the several classes of car that users of the Uber App may request. A car on the uberX platform can be driven by either a TCP holder providing a regulated TCP transportation service or a non-TCP holder providing peer-to-peer prearranged transportation service. The Decision erroneously finds that uberX meets the definition of a TNC and, as a result, is subject to Commission regulation as a transportation service provider. Decision, mimeo at 68 (Findings of Fact No. 29).

Uber’s subsidiary, Rasier, LLC (“Rasier”) contracts with non-TCP holders who use the Uber App to receive requests from users and provide peer-to-peer prearranged transportation service. Accordingly, the Commission should regulate Rasier as a TNC, but only if and when Rasier applies to the Commission to become a TNC.

service providers. The transportation service providers pay a fee to Uber to use its software technology; the passenger of the transportation service provider pays the transportation service provider for transportation services received.

III. CONCLUSION

As described above, it is legal error for the Commission to assert jurisdiction over technology companies like Uber that do not provide transportation services.

For this reason, rehearing of the Decision is warranted.

Respectfully submitted,

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