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

R.12-12-011

REPLY COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT AND SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY IN RESPONSE TO PROPOSED DECISION MODIFYING DECISION 13-09-045

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94013
(415) 701-4720

John L. Martin
Airport Director
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128
(650) 821-5000
These reply comments are submitted on behalf of the San Francisco International Airport ("SFO" or "Airport") and the San Francisco Municipal Transportation Agency ("SFMTA"), collectively, "the City" in response to the Proposed Decision Modifying Decision 13-09-045 ("the Proposed Decision"). As discussed in its opening comments in response to the Proposed Decision, the City strongly supports President Peevey's efforts to protect the public by crafting a clear, industry-wide insurance mandate applicable to all TNCs. Contrary to the arguments made by the TNCs in their opening comments in response to the Proposed Decision, President Peevey's proposal to close the gaps in the TNC insurance coverage by clarifying and modifying Decision 13-09-45 will not create confusion or unfairly burden TNCs. Instead, the Proposed Decision will provide much-needed certainty, protect the public, and require TNCs, rather than their passengers, drivers and members of the public, to bear the risks created by the TNCs' commercial activities.

I. The CPUC Should Clarify Decision 13-09-045 to Specify that the TNCs' $1 Million Commercial Liability Insurance Policies Must Cover "Period One."

A. Phase One Activity is Commercial in Nature.

Several TNCs argue in their opening comments that TNCs are not providing TNC services during Phase One because there is nothing "commercial" about turning on a TNC's app. The City disagrees. A TNC driver who has opened the TNC app is no longer engaged in a purely personal activity. Instead, the driver is advertising his or her immediate availability to provide on-demand, for-hire transportation. The TNC should provide coverage for the risks associated with this commercial activity because, as several parties have noted during this proceeding, the TNC benefits when the driver turns on its app and shows availability to provide rides to the TNC's customers.

B. Period One Should Not be Covered at a Lower Level.

President Peevey notes in the Proposed Decision that the TNCs' view of the term "providing TNC services" is too narrow and is inconsistent with the CPUC's original intent. Perhaps in recognition of this fact, several TNCs argue that if they must provide coverage for Period One, they should not be required to provide the $1 million in liability coverage that the CPUC has already mandated. SideCar suggests coverage in the amount of $50,000/$100,000 for

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1 SideCar's Comments at 4; Uber's Comments at 10.
2 Proposed Decision at 5.
death or bodily injury, and $25,000 to cover property damage.\footnote{SideCar's Comments at 4; See also Uber's Comments at 13.} This suggestion might be reasonable if the risk of a serious accident was significantly lower during Period One than during Periods Two and Three. However, the risk of a serious accident may well be higher during Period One.

As the TNCs have pointed out many times during this proceeding, TNC drivers often have more than one app open simultaneously. A TNC driver who is driving and scanning multiple apps, or even a single app, to secure a "match" may be more likely to be involved in an accident than a driver who has secured a match and is no longer distracted by viewing the app, or apps, while driving. The risk of serious accidents occurring during Period One is borne out by the fact that it was a TNC driver operating during Period One who killed a child and gravely injured her mother in a San Francisco crosswalk. The mother has stated that before was hit she saw the TNC driver "looking at his cellphone, his face illuminated by the screen."\footnote{The Recorder, June 30, 2014, p. 13.} The level of Period One insurance suggested by SideCar and Uber would be insufficient to cover the costs of this fatal accident. The family's attorney has stated publicly that the costs of the mother's medical treatment alone exceeded $500,000.\footnote{See http://www.mercurynews.com/business/ci_25345400/san-francisco-uber-announces-new-insurance-policy-drivers.}

II. Adoption of the "App On/App Off" Standard for Determining When a TNC is "Providing TNC Services" Will Not Increase Uncertainty.

Lyft argues that the Proposed Decision should not adopt the "app on/app off" definition of the term "providing TNC services" because that definition is based on an inherently ambiguous concept that will compound rather than eliminate the existing uncertainty.\footnote{Lyft's Comments at 4-5.} But the "app on/app off" standard is not ambiguous, and Lyft does not seriously contend that it is. Instead, Lyft cites to a well-documented "[u]ncertainty among smartphone consumers concerning how to close an app . . . ."\footnote{Lyft's Comments at 4.} Thus, Lyft's apparent concern is not that the "app on/app off" standard itself is uncertain, but that Lyft's drivers are unclear about how to turn off the app.

Lyft may understandably wish to avoid providing insurance coverage for a driver who has mistakenly left the app open and is no longer available to provide for-hire transportation.
But this is a potential problem that Lyft can easily solve. Decision 13-09-045 required all TNCs to institute a driver training program.\textsuperscript{8} In the context of that training program, Lyft could teach its drivers how to close the Lyft app when they are no longer available to provide TNC services.

Lyft also cites to uncertainty in the form of coverage disputes that might arise from a Phase One accident when the TNC driver had more than one app open at the time of the accident.\textsuperscript{9} As the City and other parties to this proceeding have previously noted, when multiple apps are open, the TNCs share the benefit of the drivers' commercial activity and should share the burden of that activity. If a TNC prefers not to be subjected to the uncertainty of a possible coverage dispute, it can bar its drivers from driving for other TNCs, or from operating with more than one app open at a time. Such a rule will have the added benefit of protecting the public from the risk of distracted driving by TNC drivers operating their vehicles while simultaneously scanning multiple apps in search of fares.

Lyft also argues that the "app off/app off" definition of providing TNC services could create confusion because drivers might turn on the app with no intention of providing TNC services simply to take advantage of the insurance coverage provided by the TNC. Again, a TNC benefits when its driver has the app open but has not yet accepted a fare. And as the City has previously argued in this proceeding, a TNC controls and monitors its driver's use of the app. If necessary, a TNC may institute rules that both require its drivers to close the app when they no longer intend to accept fares, and provide the drivers with an incentive to do so.

III. The Proposed Decision's Commercial Liability Insurance Requirements Do Not Unfairly Burden TNCs.

Although Uber "accepts" the CPUC's requirement that it maintain $1 million in commercial liability insurance during Periods Two and Three, it contends that if the CPUC were to clarify Decision 13-09-045 to mandate such coverage during Period One, the CPUC would be unfairly "requiring TNCs to carry commercial liability insurance that exceeds the requirements for TCPs and taxis in nearly every City in California."\textsuperscript{10} Likewise, Lyft argues that the Proposed Decision would "single out" TNCs by imposing insurance limits that are higher and broader than

\begin{footnotesize}
\begin{enumerate}
\item Decision 13-09-045 at 27.
\item Lyft's Comments at 5; SideCar's Comments at 8-9.
\item Uber's Comments at 4.
\end{enumerate}
\end{footnotesize}
those imposed on other for-hire transportation providers. The City disagrees. The requirement
that TNCs carry $1 million in commercial liability coverage is consistent with insurance
requirements imposed on similarly-situated commercial transportation providers.

TNCs provide on-demand, for-hire transportation service -- the same service provided by
taxicabs. The CPUC recognized this fact and required, in Decision 13-09-045, that TNCs carry
the same level of insurance coverage that the SFMTA requires taxicabs to carry -- $1 million in
commercial liability coverage. As several parties to this proceeding have argued, taxicabs
must provide this coverage at all times and under all circumstances. The Proposed Decision
would not require such round-the-clock coverage of TNCs. Instead, the $1 million in
commercial liability insurance coverage would be mandatory only when the TNC driver is
providing TNC services. Such a requirement is neither unfair nor burdensome.

IV. The CPUC Should Not Delay Modifying and Clarifying Its TNC Insurance
Requirements to Protect the Public.

State law mandates that the CPUC, in granting a charter-party carrier permit, require the
carrier to procure insurance that is adequate to cover its potential liability for death, bodily
injury, and destruction of property. State law has not prescribed the level of coverage that is
adequate, but has left that determination to the discretion of the CPUC. Despite the Legislature's
clear directive that the CPUC to establish insurance requirements for charter-party carriers, Lyft
urges the CPUC to delay adoption of the Proposed Decision and await possible Legislative
action. The City contends that such delay is inconsistent with the CPUC's duty to protect the
public.

Assembly Bill 2293, which is currently pending in the Assembly would, among other
things, specify the level of commercial liability insurance coverage that TNCs must provide, and

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11 Lyft's Comments at 8.
12 Decision 13-09-045 at 26.
13 Although TCPs are currently required by CPUC General Order 115-F to provide only $750,000 in commercial
liability coverage, the CPUC has ordered a Phase Two of this rulemaking proceeding to address TCP safety
requirements and ensure that they are up-to-date. The CPUC may well decide during Phase Two to increase the
TCP insurance requirement to $1 million, consistent with the requirement applicable to TNCs.
14 Lyft's Comments at 6-7.
15 Lyft also argues that the CPUC should delay its adoption of the Proposed Decision until the CPUC develops a
complete evidentiary record. (Lyft's Comments at 7.) This argument is inconsistent with Lyft's position, taken some
17 months ago, that the CPUC need not develop an evidentiary record through the conduct of discovery in this
proceeding. (Zimride's Prehearing Conference Statement, filed February 13, 2013, at 2.)
the periods during which that coverage must be in place. But AB 2293 has been amended five times since its introduction in February of this year. Thus, even assuming that AB 2293 is approved by both houses of the Legislature, and is then signed by the Governor, it is not clear that its insurance requirements will differ from those contained in the Proposed Decision.

In light of this uncertainty, the CPUC should act now to adopt the Proposed Decision and establish clear insurance mandates for TNCs. The adoption of the Proposed Decision will not preclude the Legislature from passing, or the Governor from signing, a bill that would modify those insurance mandates. The CPUC recognizes the possibility that state legislation might impact its regulation of TNCs. Accordingly, the CPUC has already ordered a second phase of this proceeding to allow it to respond to any such legislative changes. 16

V. Conclusion

The City urges the CPUC to reject the TNCs arguments that the Proposed Decision's insurance requirements are uncertain and unfair, and to act immediately to protect the public by adopting the Proposed Decision consistent with the modifications suggested in the City's opening comments filed on June 30, 2014.

Dated: July 7, 2014

Respectfully submitted,

By: /s/ Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

By: /s/ John L. Martin
Airport Director
San Francisco International Airport

16 Proposed Decision at 74.