



**FILED**  
7-11-16  
04:59 PM

**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

**OPENING COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT AND  
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
ON THE CONCEPT OF PERSONAL VEHICLES**

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These Opening Comments are submitted on behalf of the San Francisco International Airport (“SFO”) and the San Francisco Municipal Transportation Agency (“SFMTA”), collectively “the City,” in response to Commissioner Randolph’s Ruling Inviting Party Comments on the Concept of Personal Vehicles.

## INTRODUCTION

When these rulemaking proceedings commenced in December 2012, more than three and a half years ago, TNCs such as Uber and Lyft distinguished themselves from taxicab and limousine services, asserting that they were not transportation providers but technology companies that provided a platform for “ridesharing.” They argued that their “driver partners” simply “shared” their vehicles and supplemented their incomes by occasionally providing rides to other members of the community, while taxicab and limousine drivers were full time “professionals” offering their services to the general public. Lyft even characterized its fares as “donations” rather than compensation.

In its decision issued on September 23, 2013 — Decision 13-09-045 — the Commission rejected these arguments, concluding that Lyft, Uber and similar services were providing for-hire transportation to the public and were therefore charter-party carriers subject to Commission regulation. But the Commission also rejected the City’s argument that the Lyft and Uber should be governed by the same rules that apply to other charter-party carriers because the “new business model” — offering for-hire transportation services through a smartphone application — does not affect the level of regulatory oversight necessary to protect the public. Rather than applying existing rules, Decision 13-09-045 created a new category of charter-party carriers — TNCs — and subjected them to less stringent regulations than those applicable to other charter-party carriers. For example, limousines, like TNCs, provide for-hire transportation in sedans and sport utility vehicles with a seating capacity not more than ten persons, but the insurance requirements for limousines are in effect 24 hours a day, seven days a week, while TNCs are required to carry the full \$1 million in insurance only when they are transporting a passenger or are traveling to pick up a passenger.<sup>1</sup> In addition, limousine drivers are subject to a mandatory controlled substance and alcohol testing program that includes pre-employment, post-accident, reasonable suspicion, and random drug and alcohol testing, while TNCs are never required to test

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<sup>1</sup> CPUC Gen. Order No. 115-F; Cal. Pub. Util. Code § 5433.

their drivers.<sup>2</sup> Instead, TNCs are subject to a "zero tolerance intoxicating substance policy" that requires an "investigation," which need not include testing, upon receipt of a passenger complaint that a TNC driver is driving while intoxicated.<sup>3</sup>

The Commission described its rationale for treating TNCs differently than limousines as follows:

The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose. .<sup>4</sup>

We might infer from this statement that a "personal vehicle" is a vehicle that was purchased (and perhaps used) primarily for personal rather than commercial purposes. But Decision 13-09-045 provides no criteria for determining whether a particular TNC vehicle is, in fact, a personal vehicle, nor does it explain why for-hire transportation provided in such vehicles should be subject to different regulations than for-hire transportation provided in commercial vehicles. Instead, Decision 13-09-045, without explanation, bases its disparate regulatory schemes on its apparent assumption that all TNC drivers own vehicles purchased for personal use, and that the commercial use of those vehicles is always secondary to their personal use.

Perhaps that was a valid assumption when the Commission issued Decision 13-09-045 in September of 2013, but the TNC industry has changed dramatically in the almost three years that have elapsed since that date. Potential TNC drivers without access to a "personal vehicle" now have myriad options for leasing or renting a vehicle for the sole or primary purpose of providing TNC services. For example, Uber's Xchange Leasing program promises access to "exclusive leasing options" to drivers "as soon as you sign up to drive with Uber."<sup>5</sup> Enterprise offers "approved Uber driver-partners" rental vehicles for use as for-hire vehicles for periods of a week or longer,<sup>6</sup> and Hertz has partnered with Lyft to offer a similar rental service.<sup>7</sup> Breeze markets its "flexible leases" of fuel efficient vehicles to individuals who need a vehicle in order to drive for Lyft or Uber,<sup>8</sup> and Evercar offers Lyft and Uber drivers' electric vehicles for a flat per-hour

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<sup>2</sup> CPUC Gen. Order No. 157-D, Part 10; Decision 13-09-045 at 26-7.

<sup>3</sup> Decision 13-09-045 at 26-7.

<sup>4</sup> Decision 13-09-045 at 67.

<sup>5</sup> <https://get.uber.com/cl/xchange/>.

<sup>6</sup> <https://www.enterprise.com/en/business-car-rental/uber/.html>.

<sup>7</sup> <http://www.theverge.com/2016/6/30/12065590/lyft-hertz-rental-car-ride-hail>.

<sup>8</sup> <https://www.joinbreeze.com/>.

fee.<sup>9</sup> And TNC drivers' options are not limited to companies that maintain or have access to a fleet of vehicles. HyreCar arranges very short-term peer-to-peer rentals between individual vehicle owners and TNC drivers seeking a vehicle for the purpose of providing for-hire transportation.<sup>10</sup>

These new options for TNC drivers to rent or lease a vehicle solely for the purpose of providing for-hire transportation illustrate the erosion of any distinction that may have existed between TNCs and other charter-party carriers based on the fact that TNC drivers operate vehicles obtained for personal use rather than vehicles obtained solely or primarily for commercial purposes. If there was at one time a coherent rationale for applying different rules to limousines than are applied to TNCs, that rationale no longer exists. Therefore, SFMTA and SFO urge the Commission to revisit the regulatory scheme for TNCs and amend it to provide the public with the same level of protection provided by the regulatory scheme for limousines.

### COMMENTS

These Opening Comments address the questions posed in Commissioner Randolph's Ruling in the order in which they appear in the Ruling.

Question 1: Are there any safety or other public-policy concerns that would arise if a TNC driver were allowed to lease or rent a vehicle to provide TNC services? If so:

a. Describe these safety or other public-policy concerns with specificity and with reference to any applicable Commission decision, ruling, general order, state statute, state decisional law, federal decisional law, federal statute, or research that supports each of your concerns; and

b. How can the Commission best address these safety or other public-policy concerns?

Answer to Question 1(a):

Vehicle Inspections. The City is concerned that if TNC drivers are allowed to use vehicles that are leased or rented for short periods of time to provide for-hire transportation, TNCs may be unable to comply with the Commission's vehicle inspection requirements. The Commission's Decision 16-04-041, issued on April 26, 2016, requires that:

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<sup>9</sup> <http://insideevs.com/drive-uber-lyft-la-now-can-rent-ev-5-hour-via-evercar/>.

<sup>10</sup> <http://hyreCar.com/>.

All Charter Party Carrier (TCP) vehicles, including Transportation Network Companies (TNC), shall be inspected by a facility licensed by the California Bureau of Automotive Repair (a) before the vehicle is first introduced into service as a TCP or TNC vehicle; and (b) every 12 months or 50,000 miles thereafter, whichever occurs first. TCPs and TNCs shall be responsible for ensuring that each of their vehicles/drivers' vehicles complies with this requirement, and shall maintain records of such compliance for a period of three years.<sup>11</sup>

Compliance with this requirement would be relatively straightforward if TNC drivers all drove personal vehicles that they owned, or personal vehicles that they leased under long-term leasing arrangements. But as discussed above, it is no longer necessary for a TNC driver to own or lease a personal vehicle in order to provide for-hire transportation. A driver may, instead, rent or lease a vehicle for commercial purposes from: 1) an established rental car agency through a special program for TNC drivers; 2) a company dedicated exclusively to providing vehicles for TNC drivers; or 3) a company that arranges peer-to-peer vehicle rentals for TNC drivers. Because these companies offer short-term rentals, a TNC driver may use many different vehicles within the same month, or even the same week, and a single vehicle may be used by more than one TNC driver within the same week or even the same day. As the questions posed in this Ruling recognize, it may be difficult or impossible for TNCs to verify that each of these vehicles has passed an inspection by a licensed facility before it is introduced into service by a TNC driver.

Insurance. The City has similar concerns with respect to TNC compliance with statutory insurance requirements. Public Utilities Code Section 5433 imposes minimum insurance requirements on TNCs and provides that those requirements may be met through insurance that the TNC provides, insurance that the driver provides, or a combination of both. To the extent that the TNC does not maintain all the requisite insurance, it must ensure, as to each vehicle used by its drivers, that the driver (directly or through the vehicle's owner) maintains the necessary insurance through a policy specifically written to cover use of the vehicle to provide TNC transportation.<sup>12</sup> Our research indicates that some companies renting vehicles to TNCs provide some of the required insurance, while others do not. With respect to a driver who is changing vehicles on a monthly, weekly, or daily basis, it may be difficult or impossible for the TNC to ensure that each vehicle employed by the driver is adequately insured.

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<sup>11</sup> Decision 16-04-041 at 54.

<sup>12</sup> Cal. Pub. Util. Code § 5433(b)(4) and (c)(4); Decision 16-04-041 at 56, ¶ 10.

Matching Drivers with Vehicles. If the Commission authorizes TNC drivers to rent vehicles for TNC use on a short-term basis, drivers may be switching vehicles on a daily basis, and the same vehicle may be used by several drivers within the same week, or perhaps within the same day. The City fears that in light of this rapid vehicle turnover, TNCs will be unable to maintain current information at all times regarding which vehicle a particular driver is operating. This is a major safety concern for TNC passengers because TNC vehicles, unlike taxis, do not wear obvious and permanent trade dress, and are not readily distinguishable from other vehicles on the road. Therefore, passengers rely on information provided on the TNC's app — for example, the vehicle's license plate number — to ensure that they do not get into the wrong vehicle by mistake.<sup>13</sup> Such mistakes are apparently common, and there are many reported instances of such mistakes resulting in TNC passengers being violently assaulted or robbed by bogus TNC drivers.<sup>14</sup>

**Answer to Question 1(b):**

Vehicle Inspections. As noted above, Decision 16-04-041 requires TNCs to maintain records of compliance with the Commission's vehicle inspection requirements for three years. In light of the uncertainty regarding whether TNCs can comply with these requirements in the context of short-term vehicle rentals, the Commission should direct its Safety and Enforcement Division to conduct periodic inspections of these records.

Insurance. Decision 16-04-04 requires TNCs to ensure that each vehicle used by their drivers is insured in accordance with the requirements of Public Utilities Code Section 5433.<sup>15</sup> The Commission should mandate that TNCs maintain records of their compliance with that requirement for a period of three years. The Commission should also direct its Safety and Enforcement Division to conduct periodic inspections of those records.

Matching Drivers with Vehicles. The Commission should: 1) require that TNCs bar their drivers from utilizing a vehicle to provide TNC services until the TNC has approved use of the vehicle by that driver; and 2) put procedures in place that will ensure that it has current vehicle information for all drivers at all times. The Commission should also direct its Safety and

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<sup>13</sup> <https://www.uber.com/ride/safety/>.

<sup>14</sup> See, e.g., <http://www.sfgate.com/news/article/Woman-attacked-in-SF-after-getting-into-wrong-car-6874844.php>; [http://sfist.com/2016/01/16/lyft\\_passenger\\_robbed\\_at\\_gunpoint\\_b.php](http://sfist.com/2016/01/16/lyft_passenger_robbed_at_gunpoint_b.php); and <http://ktla.com/2016/04/11/fake-uber-driver-arrested-after-brutal-sexual-assault-of-passenger-in-westlake-lapd/>.

<sup>15</sup> Decision 16-04-041 at p. 56, ¶ 10.

Enforcement Division to conduct periodic reviews of the accuracy of all TNCs' information about the vehicles currently in use by their drivers.

Question 2: Should there be a minimum time period in order for a leased or rented vehicle to be driven by a TNC driver to qualify as a "personal vehicle?" If so, what are the applicable statutes or decisional law that support your response?

Answer to Question 2: As discussed above, Decision 13-09-045 implies that a personal vehicle, unlike a commercial vehicle, is a vehicle purchased primarily for personal rather than commercial purposes. The term of the vehicle lease or rental agreement may be an indication whether a vehicle was obtained for commercial rather than personal use, but it is not dispositive. For example, it may be reasonable to assume that a vehicle rented on a daily, weekly or monthly basis from a company that markets special rental packages to TNC drivers is a vehicle obtained for a commercial purpose. But there is no guarantee that a TNC driver who enters into a longer lease intends to put the vehicle primarily to personal use. Therefore, rather than focusing on the intended use of the vehicle, the City recommends that the Commission focus on enforcing its safety requirements. The Commission should set the minimum rental or lease term for TNC vehicles based on its assessment of how long it takes TNCs to ensure that: 1) the vehicle has passed inspection before it is put in service; 2) the driver has provided the requisite insurance with respect to the vehicle before it is put into service; and 3) their records reflect the fact that a driver is driving a new vehicle.

Question 3: Should the definition of a "personal vehicle" not be tied to a time period but instead be defined by authorized uses? For example, should one requirement of a "personal vehicle" be the explicit authorization of using the vehicle for TNC service in any rental or lease contract?

Answer to Question 3: Because a vehicle is not a "personal vehicle" if it is put to only commercial use, the definition of "personal vehicle" should state that a leased or rented vehicle is not a personal vehicle unless the lease or rental agreement allows personal use of the vehicle. With respect to the Assigned Commissioner's suggestion that the lease or rental agreement include a statement authorizing use of the vehicle to provide TNC service, the City recommends that the agreement include such a statement and the following attachments: 1) a report of a vehicle inspection performed by a facility licensed by the California Bureau of Automotive Repair within the past 12 months or 50,000 miles; and 2) a copy of an insurance policy procured

by the individual or entity that owns the vehicle, or the driver, that provides the minimum insurance coverage required under Public Utilities Code Section 5433.

Question 4: Where alternative definitions are proposed in answer to questions 2 and 3, how will a proposed definition of personal vehicle ensure adherence to the Commission's existing safety rules regarding vehicle inspections and insurance?

Answer to Question 4: See the City's answer to Questions 2 and 3, above.

Question 5: Where a non-TNC company offers vehicles for TNC drivers to use, what specific documentation and processes should be required of that company and/or of the TNC so that the Commission can ensure that rules regarding vehicle inspections, trade dress, and insurance are met?

Answer to Question 5: As a preliminary matter, the City notes that this question, by referring to "non-TNC companies" providing vehicles to TNC drivers, implies that TNCs also provide vehicles to their drivers. But Decision 13-09-045 states that "a TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicles."<sup>16</sup> The City respectfully suggests that the Commission provide guidance on this issue and clarify the circumstances under which a TNC may provide its drivers with vehicles without running afoul of the prohibition on fleet ownership. For example, is a TNC's agreement with a car manufacturer or car rental agency to provide vehicles for its drivers for commercial purposes consistent with that prohibition?

With respect to documentation, to ensure compliance with the Commission's rule regarding vehicle inspections, the Commission should mandate that TNCs require that their drivers, regardless of how they procured the vehicle, keep a copy of the 19-point vehicle inspection certification in the vehicle at all times that the vehicle is in TNC service. The certification should include the make and model of the vehicle, the VIN, the license plate number, the date of inspection, and the vehicle's mileage on that date. To ensure compliance with statutory requirements and the Commission's rules regarding minimum insurance, the Commission should require TNCs to obtain proof of insurance from their drivers that the vehicle they intend to drive, regardless of how they procured the vehicle, is adequately insured.

Question 6: Should the Commission distinguish vehicle inspection and insurance rules depending on the source of the vehicle offered on a short-term basis to TNC drivers, such as

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<sup>16</sup> Decision13-09-045 at 24.



rental fleets or fleets offering peer-to-peer vehicle transactions as contrasted with individual peer-to-peer transactions?

Answer to Question 6: No. Because the Commission's vehicle inspection and insurance rules are designed to protect the public, TNCs should be required to comply with the same rules with respect to every vehicle that they approve for use by their drivers.

Question 7: What insurance products exist that cover, for a single vehicle, multiple drivers driving the vehicle for periods of less than 24 hours for personal use and for a TNC? Does the insurance attach to the vehicle or to the individual driver? Does the insurance product meet California legal requirements?

Answer to Question 7: The City's research indicates that no insurance product is currently available that would cover multiple drivers using a single vehicle for commercial purposes within a 24-hour time frame.

Question 8: How much time is needed for a TNC to update its inspection, mileage, or other records on a vehicle being used by one or more drivers: (a) for periods of less than 24 hours; (b) on a weekly basis; or (c) on a monthly basis?

Answer to Question 8: The City has no access to the information about TNC policies, procedures, and capabilities that is necessary to answer this question.

Question 9: How many times a day is it feasible for a TNC to update its vehicle records where a car may be driven by several drivers in a 24-hour period?

Answer to Question 9: The City has no access to the information about TNC policies, procedures, and capabilities that is necessary to answer this question.

Question 10: What procedures are taken by a TNC to ensure that drivers have current vehicle information in the TNC's records?

Answer to Question 10: The City has no access to the information about TNC policies, procedures, and capabilities that is necessary to answer this question.

Question 11: What procedures are taken by a TNC when it finds that a driver has not notified the TNC that s/he is driving a vehicle other than the one originally registered by the driver?

Answer to Question 11: The City has no access to the information about TNC policies, procedures, and capabilities that is necessary to answer this question.

Question 12: How should the Commission ensure that each TNC company and/or company offering leased cars to TNC drivers maintains a proportion of vehicles that are accessible to disabled riders?

Answer to Question 12: The requirement to provide accessible vehicles lies with the TNCs, not with the companies that provide vehicles to TNC drivers for commercial purposes. TNCs are barred by federal and state law from discriminating against individuals with disabilities, and they must ensure that individuals with disabilities enjoy the same access enjoyed by nondisabled individuals to their for-hire transportation services. Also, the Commission regulates TNCs, not the companies that rent or lease vehicles to their drivers. Therefore, the Commission should promulgate a rule providing that a specified percentage or number of TNC vehicles must be accessible to individuals with disabilities. TNCs could enter into partnerships with other companies, similar to their partnerships with Enterprise, GM, and Hertz, to make accessible vehicles available to TNC drivers, and TNCs could offer incentives to their drivers to ensure that drivers make use of these vehicles.

### **CONCLUSION**

Car rental agencies and other companies offering rental packages designed specifically for TNC drivers have proliferated. This development highlights the illusory nature of the Commission's distinction between TNCs and other charter-party carriers. Just as some TCP permittees use their limousines for personal as well as commercial purposes, some TNC drivers offer for-hire transportation in vehicles obtained and used solely for commercial purposes. SFO and SFMTA therefore urge the Commission to abandon its distinction between these two types of charter-party carriers, and apply to TNCs the same safety rules that it applies to limousines. In addition, whether a rented or leased vehicle is used by a TNC or by a TCP, the Commission must protect the public and ensure that the vehicle, and the insurance that flows with it, meet the Commission's regulations.

Dated: July 11, 2016

Respectfully submitted,

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