

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

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing,
And New On-Line-Enabled Transportation
Services

R.12-12-011

**OPENING COMMENTS OF THE SAN FRANCISCO INTERNATIONAL AIRPORT, THE
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, AND THE SAN
FRANCISCO CITY ATTORNEY'S OFFICE REGARDING PROPOSED DATA REPORTING
REQUIREMENTS**

TRACK 3 – TNC DATA

DENNIS J. HERRERA
City Attorney
JOHN I. KENNEDY
Deputy City Attorney
Office of the City Attorney
San Francisco, CA 94102-4682
Tel: (415) 554-3887
Email: john.kennedy@sfcityatty.org

EDWARD D. REISKIN
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Tel: (415) 701-4720

IVAR C. SATERO
Airport Director
San Francisco International Airport
International Terminal, 5th Floor
P.O. Box 8097
San Francisco, CA 94128
Tel: (650) 821-5006

These Comments are submitted jointly by the San Francisco International Airport (“Airport” or “SFO”), the San Francisco Municipal Transportation Agency (“SFMTA”), and the San Francisco City Attorney’s Office (“City Attorney”) (collectively, the “City”).

I. INTRODUCTION

In the Assigned Commissioner’s Ruling on February 8, 2019, the Commission stated that it seeks further comment regarding (1) proposed data requirements to be reported by TNCs as set forth in Table A, (2) proposed submission requirements for data reporting in Table B, including the proposal for data to be submitted in an anonymized, aggregated form on a quarterly basis, and (3) questions pertaining to additional reporting requirements, including changes to the annual data reports provided to the Commission by TNCs, as listed in Table C.

The Commission should modify the proposed data reporting requirements in Table A to assist local jurisdictions with data driven transportation planning by requiring reporting of meaningful TNC trip data, and fulfill the Commission’s obligations under state law; make TNC trip data available on a more granular level such as by zip code, census tract, or at the neighborhood level; re-examine the confidentiality requirement stated in a footnote to Decision 13-09-045, by ordering the TNC annual reports to be available to the public, or at least shared with other interested government entities; and require reporting of other data listed in SFO/SFMTA July 2017 opening comments.

II. DISCUSSION

A. The Reporting Requirements in Table A Lack Sufficient Detail to Be Useful

The Assigned Commissioner’s Ruling states that the purpose of these comments are to “(1) develop a more comprehensive record to address the interest from governmental entities in obtaining and analyzing TNC trip data, and (2) develop initial data for the Commission and for parties to use in

implementing the new programs recently established by the Legislature.”¹ Unfortunately, the proposed TNC data reporting requirements fail to accomplish either of these goals.

As to the first goal, in SFO/SFMTA’s Opening and Reply Comments to the Track 3-TNC Data rulemaking filed in July 2017, SFMTA and SFO provided a comprehensive articulation of the City’s interest in TNC data, and the importance of having robust data to inform transportation decisions.² As a Charter City, the City has the responsibility and authority to manage municipal affairs within its geographic borders. Under the City’s Charter, and its responsibility to the general public, the City is required to plan the transportation infrastructure for the future, manage congestion, and manage curb space appropriately. TNC ride data can provide meaningful insight into these transportation planning needs. Thus, SFMTA has a keen need for this data. Without TNC data, SFMTA transportation planners must rely instead on anecdotal information to fill in the gaps, but such information does not present an accurate depiction of conditions on the ground.

Other California cities, like San Francisco, need access to different levels of granular TNC data depending on the purpose. For example, some cities may need to compare data at the zip code, census tract, or locally defined level such neighborhoods. In SFO/SFMTA Track 3 Opening Comments, the parties listed a series of data driven research questions related to a specific subject area, such as Safety/Congestion, Equity, and Sustainability.³ SFMTA and SFO articulated the purposes for which the data would be used, including: to enhance basic traffic engineering, including adjusting signal timing, lane assignments and curb regulations, such as white zones; to create proactive traffic safety

¹ Assigned Commissioner’s Ruling Seeking Comments on Proposed Data Reporting Requirements (issued February 8, 2019), at p. 3.

² See e.g. SFMTA and SFO Opening Comments to Phase III.B Scoping Memo and Ruling of the Assigned Commissioner: Track 3 – TNC Data, at p. 4; and *generally* SFMTA and SFO Reply Comments to Phase III.B Scoping Memo and Ruling of the Assigned Commissioner: Track 3 – TNC Data.

³ SFMTA and SFO Opening Comments to Phase III.B Scoping Memo and Ruling of the Assigned Commissioner: Track 3 – TNC Data, at pp. 6-7.

changes; and to redesign streets to optimize public transit options and reduce congestion.⁴ Without access to granular TNC data by zip code, census tract, or at the neighborhood level, SFMTA is constrained in its ability to engage in comprehensive transportation planning.

As currently proposed, the data reporting requirements listed in Table A are insufficient to meet the data needs required for SFMTA to engage in data driven transportation planning. The proposed data in Table A, if reported at the state level is not granular enough to be of any use to local jurisdictions.

As to the Commission’s second goal, the reporting obligations in Table A will not provide sufficient detail for the Commission to implement its legislatively mandated obligations. Senate Bill (“SB”) 1376 directs the Commission to study and implement accessibility options for persons with disabilities. To perform these obligations, the Commission must: (1) study accessibility offered according to geography;⁵ (2) determine which geographic areas are appropriate for inclusion in Access Fund program based on determination of demand for WAVs;⁶ (3) develop benchmarks for TNCs and access providers response times, percentage of trips fulfilled versus trips requested, and number of users requesting rides versus community WAV demand for each geographic area;⁷ and (4) report wait times by geographic area.⁸ Table A does not contain information that would allow the Commission to perform any of these required statutory obligations.

The City understands that SB 1376 directs the Commission to develop a definition of “geographic areas” through workshops and stakeholder engagement, and that the Commission has begun these efforts. However, the proposed data reporting in Table A should reflect this necessary

⁴ *Id.* at pp. 11-12.

⁵ Public Util. Code Section 5440.5(a)(2)(A)(i). All references are to the Public Utilities Code, unless otherwise noted.

⁶ Section 5440.5(a)(1)(D).

⁷ Section 5440.5(a)(1)(J).

⁸ Section 5440.5(a)(1)(I)(iii).

information, even if the definition of “geographic area” may follow at a later date. SFMTA is particularly concerned that TNC response time be adequately documented, as this is a key data point to assess the service experience for wheelchair users and the performance of TNC service. Additionally, because the Access Fund will be funded by a \$.05 fee on each non-exempt TNC trip that originates in a specific, to-be-determined geographic area, the public should have an understanding of the number of trips provided by geographical area. Transparency in the collection and disbursement of funds to ensure equivalent disabled access is critical, but cannot be achieved if the appropriate data is not reported.

SB 1014 requires the Commission to evaluate the impacts TNCs have on congestion and emissions stemming from vehicles driven by TNC drivers. To that end, SB 1014 mandates that the Commission “shall establish a baseline for emissions of greenhouse gases for vehicles used on the online-enabled applications or platforms by transportation network companies on a per-passenger-mile basis.”⁹ Reporting requirements 1 through 4 appear to intended to calculate the baseline. However, the proposal does not systematically segment the required reporting obligations. The data should include vehicle miles traveled during each “Period” as defined by the Commission, and by each type of vehicle, including zero-emissions vehicles. The Commission is also directed to calculate the “total passenger-miles completed using an average passengers-per-trip estimate to account for trips where exact passenger head count data was not captured.” In order to calculate the total passenger-miles completed, the Commission needs to calculate the number of passengers for each trip.

This same type of information can be useful to local and regional transportation planning entities, who are charged with the similar obligations of reducing greenhouse gas emissions. In recognition of this fact, SB 1014 further directs the Commission, Air Resources Board, and the Energy Commission to ensure that implementation of SB 1014 complements and supports sustainable land-

⁹ Section 5450(b)(1).

use objectives contained in Section 65080 of the California Government Code. Section 65080, in turn, directs the development of regional transportation plans, and encourages cities and counties to utilize travel demand models consistent with the regional plans. Further, SB 1014 requires the Commission to ensure minimal negative impact on low-income and moderate-income drivers, support the goals of clean mobility for low- and moderate- income individuals.

The proposed data reporting in Table A would not accomplish the Commission's stated goals. For the reasons set forth above, we urge the Commission to reevaluate the proposed data reporting requirements in Table A to both assist local jurisdictions with data driven transportation planning by requiring reporting of meaningful TNC trip data, and fulfill the Commission's obligations under state law.

B. The Commission's Proposal in Table B Is a Step in the Right Direction.

Providing data on the Commission's website is a step in the right direction, although the City emphasizes that making statewide data available as proposed in Table A is generally inadequate because of the lack of specificity (i.e. it is aggregated at too high a level to be meaningful to inform local jurisdictions or the general public about local impacts of TNC service and help transportation planners develop informed solutions to traffic and curb management which are data driven). The City notes that the city of Portland receives granular ride data, yet aggregates this information in a manner that is still useful for transportation planners. For example, the Portland Bureau of Transportation receives latitude/longitude origin and destination data, but the data they release publically is aggregated annual data that includes both TNCs and taxis.

As the Commission previously stated "[s]ince records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the [Cal. Public Records Act's] definition of public records includes records received by, as well as generated

by, the agency.”¹⁰ Consistent with this premise, the Commission has already soundly rejected Uber’s assertion that information submitted to the Commission could constitute a trade secret.¹¹ Even if TNC trip data were a trade secret, the Commission has already set forth an approach for resolving this concern by requiring that this data be publicly reported using aggregate information.¹² Further, the City incorporates the comments previously filed by the City Attorney on July 17, 2017, and July 31, 2017, which describe compliance with the Public Records Act, and the Commission’s ability to share confidential information with local entities pursuant to Government Code 6254(e).

C. Additional Improvements to Data Reported

The Commission should clarify that the annual reports submitted by TNCs should also be posted on the Commission’s website described in Table B. As stated above, documents submitted by the TNCs are regulatory documents, and the Commission has already soundly rejected the assertion that the annual reporting requirements constitute trade secrets, public posting of the documents simply complies with the Public Records Act.

The Commission has already addressed the question of whether the reported information constitutes a trade secret. As the Commission stated, these reports are not consumer data compilations that the TNCs “on [their] own initiative, developed some product or process for [their] own private economic benefit.”¹³ Rather “it is the Commission that has ordered the TNCs to respond, in template format, with TNC trip data by zip code. The compilation is being put together at the behest of the Commission, rather than by Uber for some competitive advantage over its competitors.”¹⁴

¹⁰ Rulemaking 14-11-001, Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, 2014 WL 6480751, at *1 (Cal.P.U.C. Nov. 6, 2014) (“Rulemaking 14-11-001”).

¹¹ Decision 16-01-014 at p. 46-48.

¹² *Id.*

¹³ *Id.* at p. 47.

¹⁴ *Id.*

The TNCs also lack any reasonable expectation that the information in these reports should remain confidential. As the Commission has stated previously, given Uber’s “voluntary preparation and submittal of trip data in Boston, and the submittal of trip data in New York so that its license suspension could be lifted, [it] does not have a reasonable expectation that all trip data would meet the definition of a trade secret. As the United States Supreme Court noted in *Ruckelshaus v. Monsanto Company* (1984) 467 U.S. 986, 1002: ‘if an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publically discloses the secret, his property right is extinguished.’”¹⁵ Since the Commission articulated this well-established principle, TNCs have agreed to provide individual ride data to other cities, including most recently Seattle¹⁶ and Portland.

The Commission has already examined and rejected assertions that this reported information constitutes proprietary or competitively sensitive data.

Rasier-CA’s assertion of a trade secret also stems from the apparent fear that, if the information it provides to the Commission is released to the public, its competitors may obtain some economic value from the disclosure. (Exhibit 10 at 23-24.) Yet Rasier-CA fails to make a credible argument as to how its competitors can obtain economic value from the information’s disclosure. All TNC drivers are competing for the same pool of potential passengers. All TNC drivers know where the zip codes and neighborhoods are that have the greater chances of securing rides for the day, so any release of Rasier-CA’s trip data isn’t going to provide the competition with information that they don’t already possess.¹⁷

Thus, the Commission should re-examine the confidentiality requirement stated in a footnote to Decision 13-09-045, and order that the annual reports be published by the Consumer Protection and Enforcement Division.

¹⁵ *Id.* at p. 47.

¹⁶ *See e.g.* Joint Parties Motion for Official Notice (filed on December 19, 2018).

¹⁷ *Id.*

Additionally, the Commission should report the data listed in SFO/SFMTA July 2017 opening comments.¹⁸

III. CONCLUSION

For the reasons set forth herein, the Commission should: (1) reevaluate the proposed data reporting requirements in Table A to both assist local jurisdictions with data driven transportation planning by requiring reporting of meaningful TNC trip data, and fulfill the Commission's obligations under state law; (2) make TNC trip data available on a more granular level such as by zip code, census tract or at the neighborhood level; (3) re-examine the confidentiality requirement stated in a footnote to Decision 13-09-045, and order that the annual reports submitted by the TNCs to the Commission be publicly available; and (4) require reporting of other data listed in SFO/SFMTA July 2017 opening comments.

Dated: February 22, 2019

Respectfully submitted,

By: _____ /s/
Ivar C. Satero
Airport Director
San Francisco International Airport

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

By: _____ /s/
Dennis J. Herrera
San Francisco City Attorney

¹⁸ SFMTA and SFO Opening Comments to Phase III.B Scoping Memo and Ruling of the Assigned Commissioner: Track 3 – TNC Data, at pp. 6-7, and 10-11.