



**FILED**  
4-21-14  
04:59 PM

These reply 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 the Assigned Commissioner’s Ruling dated March 25, 2014 (“ACR”).

As reflected in our initial comments to the ACR filed on April 7, 2014, the City wholeheartedly agrees that the CPUC’s initial insurance regulations for TNCs “raised a specter of potential gaps in TNC insurance” and that, “in accordance with California’s strong public policy of providing insurance protection,” the CPUC should “require the TNCs to provide the widest scope of coverage to protect the TNC drivers, subscribing TNC passengers, other drivers, and pedestrians on a consistent basis.” (ACR, p. 5.)

The California Department of Insurance (“CDI”) also concurs that the insurance coverage gaps related to the operation of TNCs must be addressed. The CDI held an investigative hearing on insurance issues related to TNCs on March 21, 2014, and submitted a letter to the CPUC on April 7, 2014 containing its recommendations, based in part on testimony received at the hearing.<sup>1</sup> The City endorses the CDI’s recommendations for improving TNC insurance requirements, and we address those recommendations in detail in these reply comments. The City’s reply comments also ask the CPUC to amend two other TNC regulations to protect the public safety.

**1. The CPUC Should Adopt the CA Department of Insurance’s Eight Recommendations for TNC Insurance Regulations.**

The CDI’s recommendations are premised on the sound conclusion that because TNCs are in the business of encouraging non-professional drivers to use their personal vehicles to make a profit, TNCs should bear the insurance burden of this business model. (Exhibit A, p. 1.) The City agrees. Not surprisingly, the gist of the TNCs’ initial comments to the ACR is that they disagree with the proposition that they are responsible for providing insurance sufficient to cover the risks to the public that result from their conduct.

***CDI Recommendation No. 1 – Refine definition of “when providing TNC services” in the CPUC Regulation***

The CDI’s recommendation is simple. There are three relevant periods associated with TNC services: Period 1 -- while the app open and there is no match; Period 2 -- from the point the match is accepted through passenger pick-up; and Period 3 -- while the passenger is in car until the passenger

---

<sup>1</sup> See 4/7/2014 Letter from Insurance Commissioner Dave Jones to Michael R. Peevey, President of the CPUC, attached hereto as Exhibit A.

safely exits the vehicle. The CDI recommends that the CPUC's definition of "when providing TNC services" cover all three of these periods. (Exhibit A, p. 2.) The City agrees, and has suggested language that would take into account possible variations in TNC apps and operations, and possible changes in TNC app technology. (See City's Initial Comments, pp. 1-2.)<sup>2</sup>

Lyft argues that the CPUC need not define the phrase "providing TNC services" because the phrase is already "clear and unambiguous." (Lyft's Initial Comments, p. 2.) Lyft's effort to support that claim through reliance on the Decision's definition of the term "TNC" and its discussion of prearrangement is not persuasive. (*Id.*, at 2-3). As Sidecar frankly acknowledges, the Decision "does not contain an unambiguous definition of the phrase "providing TNC services." (Sidecar's Initial Comments, p. 4, emphasis added.) The City urges the CPUC to define the term clearly for the benefit of all parties – TNCs, TNC drivers, TNC passengers, personal insurers, TNC insurers, and members of the general public.

***CDI Recommendation No. 2 – Require \$1 million primary commercial liability insurance during all three periods***

The CDI recommendation that the TNCs be required to provide \$1 million in commercial liability insurance during all three periods is consistent with the CPUC's proposal (ACR, p. 2), which the City has endorsed (City's Initial Comments, pp. 1-2). But the CDI's recommendation goes farther than the ACR's proposal because the CDI abides by its original recommendation that the TNC insurance, during all periods in which it is in effect, be primary insurance.<sup>3</sup> The City cited that recommendation in its initial comments to the ACR, noting the CDI's conclusion that the lack of primary TNC insurance will impose a burden on injured consumers, particularly those who do not have the benefit of legal counsel. (City's Initial Comments, pp. 3-4.) The City again asks that the CPUC accept the CDI's recommendation that TNC insurance be primary. Anything short of a primary commercial liability policy puts the public at risk.

---

<sup>2</sup> Because Airport roadways are private and TNC drivers on Airport roadways are only on the roadways for purposes of conducting TNC business, the Airport requires coverage for a fourth period – after a passenger has been dropped off but while the TNC driver is still on the Airport premises. There is no "errand" or personal business a TNC driver would be engaged in after a drop off, since the sole purpose of driving to the Airport is to provide TNC services.

<sup>3</sup> See Letter of September 9, 2013 from CDI to CPUC's Director of Policy & Planning Division, pp. 1-2, attached hereto as Exhibit B.

With respect to the ACR's more limited proposal -- that the TNCs cover Period 1 with their currently-mandated "drop down" coverage of \$1 million, the TNCs are uniformly in opposition. Their arguments come down to the fact that TNCs do not want to bear the costs of purchasing insurance to pay for risks created by their commercial activities. For example, Sidecar points to the "negative financial consequences both for existing TNCs as well as for potential new entrants because of increased costs of insurance . . . ." (Sidecar's Initial Comments, p. 5) Summon complains that requiring TNCs to carry insurance for Period 1 would "put an unfair burden on TNCs and their insurance carriers by multiplying their risk exposure." (Summon's Initial Comments, p. 6.) Lyft states that the assigned Commissioner's proposal will force TNCs to provide "free insurance to TNC drivers at the expense of TNCs." (Lyft's Initial Comments, p. 11.)

Instead of bearing the insurance costs associated with their business model, TNCs would have their drivers' personal insurance policies cover the risk of accidents during Period 1. Lyft states that it "expects" personal insurers to cover this period. (Lyft's Initial Comments, p.12.) Wingz notes that while it currently carries the mandated \$1 million insurance policy, it believes that "each individual driver should be responsible for buying his or her own coverage . . . ." (Wingz' Initial Comments, p. 3.) And Uber argues that drivers should bear the liability risk during Phase 1, and that the CPUC should "encourage" the personal insurance industry to create new personal insurance policies that will cover that risk. (Uber's Initial Comments, pp. 6-7.)

The CDI, the state agency charged with overseeing the insurance industry, is unequivocal that this option is not viable -- personal insurers do not currently cover, do not plan to cover, and should not be required to cover these risks. (Exhibit A, pp. 1-2, 3.) As the CDI and other parties contend, if a driver has the app on, the TNC benefits from the driver showing availability to provide rides to potential customers. (*See* Exhibit A, p. 3.) And as witnesses at the CDI hearing noted, Period 1 may be the most dangerous period of TNC-related activity, particularly where "surge pricing" is in effect and drivers have an incentive to rush to other parts of the City to take advantage of the higher fares available. (*Id.*, at p. 3.) The CDI argues that the CPUC's failure to require TNCs to insure against the risks of accidents during Period 1 will likely increase personal automobile insurance rates for all drivers. (Exhibit A, p. 1.)

TNCs try to support their argument that coverage during Period 1 should be limited to their drivers' personal automobile insurance by invoking what Uber describes as the "moral hazards" related to requiring TNCs to provide such coverage. (Uber's Initial Comments, Attachment A, p. 3; *see also*

Exhibit A, p 3.) The TNCs speculate that drivers may turn on the app when they have no intention of accepting rides in order to take advantage of the increased insurance coverage offered by TNCs. Again, a TNC benefits when its driver has the app open but has not yet accepted a fare, and TNCs manage the use of their apps and can remedy this problem if it occurs. TNCs also argue that a driver might turn on the app after an accident in order to secure the increased insurance coverage. With respect to the possibility that drivers might engage in insurance fraud, a representative of the San Francisco District Attorney's Office testified at the CDI's March 21, 2014 investigative hearing that the current TNC insurance structure incentivizes drivers to engage in insurance fraud, and that this fraud is already occurring<sup>4</sup>

TNCs also cite to possible coverage disputes if drivers have multiple apps open. If multiple apps are open, the TNCs share that benefit and should share the burden. If they do not wish to do so, they can implement rules prohibiting their drivers from logging onto other apps while their app is open. In sum, we agree with the CDI that the TNCs can monitor and control the use of their apps, and are in the best position to solve these potential problems. (Exhibit A, p. 3.)

To support its contention that personal insurers will cover accidents that occur during Period 1, Lyft points to the fact that the Uber driver's personal insurer has not, like Uber, denied coverage for the fatal New Year's Eve accident in San Francisco. But a driver's personal insurance coverage is unlikely to be sufficient to cover the costs of such an accident. California requires its drivers to carry only \$15,000 of coverage for injury or death to one person, and \$30,000 of coverage for injury/death of more than one person. (Cal. Ins. Code § 11580.1(b)(1).) A child was killed in the New Year's Eve accident, and her mother was seriously injured. Costs for the mother's medical treatment had reportedly reached almost \$500,000 by March 14 of this year.<sup>5</sup> The City agrees with the CDI that personal automobile insurance coverage is far too low for drivers who are using their vehicles for livery purposes. (Exhibit A, p. 2.)

The coverage gap is well-documented. The CPUC should not continue to allow TNCs to shift the cost of their own lack of insurance to personal automobile insurers, injured parties, TNC drivers, or the public at large. (Exhibit A, pp. 1, 3.)

---

<sup>4</sup>An audio recording of that hearing – “Insurance and Transportation Network Companies: solving the insurance challenges so passengers, drivers, pedestrians and property owners are adequately protected” --is available at: <http://www.insurance.ca.gov/video/0030VideoHearings/tnc.cfm>.

<sup>5</sup> See [http://www.mercurynews.com/business/ci\\_25345400/san-francisco-uber-announces-new-insurance-policy-drivers](http://www.mercurynews.com/business/ci_25345400/san-francisco-uber-announces-new-insurance-policy-drivers).

***CDI Recommendation No. 3 -- TNCs should carry additional coverages that protect drivers and passengers***

The ACR asked whether, in addition to requiring \$1 million in commercial liability insurance, it should require all TNCs to provide \$1 million in uninsured/underinsured motorist coverage, comprehensive and collision coverage in the amount of \$50,000, and medical payments coverage in the amount of \$5,000. In its Initial Comments, the City endorsed these additional requirements. (City's Initial Comments, p. 2.) As the CDI's April 7 letter makes clear (see Exhibit A, p. 4), the amount of comprehensive and collision coverage offered by the TNC should mirror what the driver has purchased under his or own personal automobile policy. The City supports this recommendation.

***CDI Recommendation No. 4 – Require effective notice to personal automobile insurers***

The CDI recommends that the CPUC require each TNC to have on file the driver's notification to his or her personal automobile insurer of the driver's affiliation with a TNC, before the TNC authorizes the driver to use its app. The CDI notes that some insurers will decline to insure a vehicle owner who drives for a TNC, and the driver should be made aware of the possibility of losing his or her personal automobile coverage. The City, which made a very similar suggestion in its initial comments (City's Initial Comments, pp. 4-5), supports this CDI recommendation.

***CDI Recommendation No. 5 – TNCs must share “app” data with insurers after accidents***

This proposed regulation would require TNCs to share app data with the driver's personal automobile insurer during the insurer's investigation of an accident, to allow the insurer to determine whether the driver was performing TNC services at the time of the accident. TNCs would be required to inform their drivers of this requirement. The City supports this proposed regulation in the interest of ensuring that insurance claims can be efficiently processed and paid.

***CDI Recommendation No. 6 – Evidence of Coverage***

The City agrees that the CPUC should require TNCs to provide their drivers with evidence of TNC insurance coverage so that the driver can share it potential claimants after an accident that occurs while the driver is providing TNC services. The City also recommends that TNCs require their drivers to share the evidence of TNC insurance coverage with potential claimants.

***CDI Recommendation No. 7 – Disclosure about “private clients”***

The City agrees with the CDI that TNCs should be required to alert their passengers and their drivers that both TNC and personal automobile insurance will likely be unavailable in the event of an accident that occurs when a driver provides for-hire transportation outside of the app.

***CDI Recommendation No. 8 -- Delay new insurance requirements***

The CDI suggests that the CPUC delay the effective date of additional insurance coverage requirements for 60 days to allow the TNCs to secure that coverage. The City concurs. We wish to stress, however, that we oppose Lyft's proposal that the CPUC delay action to address documented gaps in TNC insurance coverage until Phase II of this rulemaking proceeding. The City's understanding of the CPUC's Decision 14-04-22, issued on April 11, 2014, is that the CPUC has granted rehearing on the question whether the insurance provisions of Decision 13-09-045 are adequate, in response to the Taxicab Paratransit Association of California's request for rehearing. The rehearing on the insurance requirements will be conducted through the process that the assigned Commissioner dictated in his March 25, 2014 ACR.

**2. The CPUC Should Define the Term "Personal Vehicle"**

The CPUC's Decision 13-09-945 defines a TNC as "an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles." (Decision, pp. 23-24.) The Decision does not define the term "personal vehicle," except to state that the main distinction between a TCP and a TNC is use of a personal vehicle rather than a vehicle, like a limousine, "purchased primarily for a commercial purpose." (*Ibid.*) In its initial comments, the City discussed press reports of a new business in San Francisco that provides rental cars to potential TNC drivers expressly for the purpose of allowing those drivers to provide TNC services. (City's Initial Comments, pp. 6-7.) In addition, press reports indicate that Uber may be assisting its drivers to purchase or lease vehicles that may be used primarily for a commercial purpose -- to drive for Uber.<sup>6</sup> The City again urges the CPUC to clarify the term "personal vehicle," and require TNCs to ensure that their drivers are using personal vehicles -- not vehicles purchased or leased primarily for a commercial purpose, including vehicles rented on a daily weekly or monthly basis.

**3. The CPUC Should Clarify Its Driver Training Requirement and Should Mandate Training Related to Driving in Urban Areas Among Pedestrians and Bicyclists.**

Decision 13-09-045 required all TNCs to "establish a driver training program to ensure that all drivers are safely operating the vehicle before the driver being able to offer service." (Decision, p.

---

<sup>6</sup> See <http://www.bloomberg.com/news/2013-11-25/uber-drivers-to-get-gm-and-toyota-financing-deals.html>; and <http://www.businessweek.com/articles/2014-02-20/uber-leads-taxi-industry-disruption-amid-fight-for-riders-drivers>.

27.)<sup>7</sup> The Decision contains no parameters for TNC driver training, e.g., number of training hours, course curriculum, or required qualifications of the trainers. Having reviewed the driver training programs that TNC applicants have filed with the CPUC thus far, the City urges the CPUC to amend its training requirement to provide standards that the TNC must meet as a condition of receiving a TNC license.<sup>8</sup> Specifically, in light of the rapidly changing use of urban streets to rely on more multimodal forms of transportation, the CPUC should include a requirement for driver training related to safe driving on streets where people are bicycling and walking. In San Francisco and other cities, collisions between vehicles and pedestrians and bicyclist are most often the result of driver behavior.<sup>9</sup>, and in San Francisco a six-year-old girl recently died, and her mother was gravely injured, after being hit in a crosswalk by a TNC driver. The City urges the CPUC to amend its driver training requirement to include this critical public safety focus.

Dated: April 21, 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

---

<sup>7</sup> TNCs were required to file their driver training programs within 45 days of the adoption of the Decision. (*Id.*)

<sup>8</sup> See [http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC\\_Applications\\_Received\\_by\\_the\\_CPUC.htm](http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC_Applications_Received_by_the_CPUC.htm). After a review of the driver training plan filings on the CPUC's website, the City notes the following problems. InstantCab's "4 Steps to Safety" brochure is very short and does not focus on actual driving. Wingz does not describe its 30-minute one-on-one driver training sessions. Sidecar's two-hour in-person driver training program, as well as its virtual training program, were apparently filed with the CPUC under seal. Lyft requires a driver to take a "short distance trip" with a "Lyft mentor" who will act as a passenger and will monitor "drivers reactions behind the wheel when dealing with other drivers, bicycles, pedestrians, etc." But there is no mention of the training a mentor receives, whether the mentor files a report with Lyft, and what consequences ensue if a mentor expresses concern about the driver's abilities. Raiser-CA's driver training program appears to consist solely of its recommendation that drivers with less than 5 years of driving history take a driver training course approved by the DMV.

<sup>9</sup> See <http://alamedaca.gov/news/2014/03/04/police-promoting-pedestrian-awareness>, and [http://walkfirst.sfplanning.org/index.php/home/download/WF\\_FAQ\\_140304.pdf](http://walkfirst.sfplanning.org/index.php/home/download/WF_FAQ_140304.pdf). See also the S.F. Chronicle article dated April 20, 2014, which is attached hereto as Exhibit C, regarding the risks faced by pedestrians in San Francisco.



**Exhibit A**

April 7, 2014 Letter from the Insurance Commissioner Dave Jones to Michael R. Peevey,  
President of the California Public Utilities Commission



**DAVE JONES**  
Insurance Commissioner

April 7, 2014

Michael R. Peevey, President  
California Public Utilities Commission  
505 Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94105

Dear Commissioner Peevey:

The California Department of Insurance (CDI) held an investigative hearing on March 21, 2014, relating to insurance issues and Transportation Network Companies (TNCs) such as Uber, Lyft, Sidecar and Wingz. The full agenda, background documents, and audio of the hearing are available on the web at <http://www.insurance.ca.gov/video/0030VideoHearings/tnc.cfm>.

CDI recommends the California Public Utilities Commission (CPUC) enact additional regulations and amend existing regulation to address insurance coverage gaps in California related to the operation of TNCs.

Underlying these findings and recommendations is the conclusion that as long as TNCs are encouraging non-professional drivers to use their personal vehicles to drive passengers for a profit, a risk for which personal automobile insurance is not available, TNCs should bear the insurance burden.

**Finding 1: Drivers' existing personal automobile insurance does not cover TNC-related driving and auto insurers are not planning to offer coverage of this risk in the near future if ever.**

TNCs are under the mistaken impression that personal automobile insurers cover now, planned to cover, or will cover the risk of TNC-related for-hire transportation.

Instead, CDI finds that personal automobile insurers never planned or intended to underwrite for this risk, which did not exist when the current policies were written. Insurers did not incorporate for-hire use when developing their rates. Adding this new TNC exposure to the personal automobile insurance "pool" may increase personal automobile insurance rates. The fact that some exclusions in personal automobile



- Period 3: Primary commercial liability insurance in the amount of \$1,000,000

TNCs make a "moral hazard" argument against requiring the TNC to provide insurance during Period 1, including: (1) drivers may be running personal errands; (2) drivers may have multiple applications open at the same time; (3) drivers with low limits on their personal automobile insurance policy will turn on the application in the event of an accident to secure more robust coverage; and (4) drivers start to look more like employees or independent contractors if the TNC covers this period. Even if a driver is running errands during Period 1, if that driver has the app open, the TNC benefits from the driver showing availability to provide rides to customers. TNCs are best positioned to address most or all of the "moral hazard" issues listed above, as opposed to shifting the cost of the lack of insurance to passengers, pedestrians or other drivers.

Insurance companies and brokers tell CDI that Californians cannot purchase either (1) personal automobile insurance that covers driving passengers for hire, or (2) livery insurance on a personal vehicle. While the TNCs argue that some personal automobile insurer might file an endorsement for Period 1, no such endorsement has been filed and insurers testified that they do not plan to file such an endorsement.

The only solution to cover this insurance gap, short of mandating personal lines insurers cover it, is to have the TNCs bear this risk. CDI concludes that personal auto insurers should not be mandated to cover a risk which is associated with the business model of the TNCs.

Two witnesses at CDI's March 21 hearing testified that Period 1 is the most dangerous part of a TNC trip, especially in light of the "surge pricing" some TNCs have adopted that might encourage drivers to rush to a certain part of town to benefit from the higher fares available. At least one death and several injuries have already resulted from a collision with pedestrians in California while a driver was driving for a TNC during period 1, according to testimony at our hearing. The CPUC regulation should be amended to require TNCs provide primary commercial liability for period 1.

**Recommendation 3: TNCs should carry additional coverages that protect drivers and passengers**

TNCs should be required to carry \$1,000,000 in uninsured/underinsured motorist coverage because it is important to protect both drivers and passengers. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose.

TNCs should also be required to carry comprehensive and collision that mirror what the driver has purchased on his or her personal automobile insurance policy, subject to a reasonable deductible, perhaps not more than \$1,000. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose. This would also cover lien holders that require comprehensive and collision coverage to secure the lender's interest in the vehicle

The CPUC should require that TNCs provide disclosures to advise TNC drivers who do not have comprehensive and collision coverage that their car will not be covered by the TNC's insurance in the event of an event that would normally trigger collision or comprehensive coverage.

**Recommendation 4: Require effective notice to personal automobile insurers**

Drivers should know, before they begin driving for a TNC, if their personal automobile insurer will cover any of the risks related to TNC activity. The current CPUC regulations require the TNCs to obtain a copy of the driver's personal automobile insurance policy. CDI recommends that the driver also be required to notify his or her personal automobile insurer of the driver's affiliation with a TNC, and that the TNC be required to have the driver's notification to his or her personal automobile insurer on file before authorizing the driver to provide rides. It should be noted that some personal automobile insurers may not wish to insure vehicle owners who drive for TNCs. The driver should be made aware of the potential of losing his or her personal automobile insurance coverage by driving for a TNC.

**Recommendation 5: TNCs must share "app" data with insurers after accidents**

TNCs should be required to share "app" data with the personal automobile insurer during the insurance company's investigation of an accident, so personal automobile insurers can have more information about whether the driver was performing TNC services at the time of the accident. This requirement should be disclosed to the TNC driver.

**Recommendation 6: Evidence of coverage**

The CPUC should require the TNCs to provide to the TNC driver evidence of coverage from the TNC which the driver can share in the case of an accident during a TNC-covered period.

**Recommendation 7: Disclosure about "private clients"**

Taxis and charter party carriers tend to develop over time "private clients" who schedule rides directly with the driver, outside of the normal dispatch channels. Because the

insurance for taxis and limos is in effect 24/7/365, the driver and the passenger have coverage during these rides. But, the CPUC-required TNC insurance is in effect only when the driver is performing a TNC activity. If a TNC driver picks up a "private client" outside of the TNC app, it is likely no insurance would be in effect, because the driver is using his or her personal vehicle for a livery purpose. TNCs should be required to provide prominent disclosures about this risk to both drivers and passengers.

**Recommendation 8: Delay new insurance requirements**

Some time may be needed to secure this expanded coverage. We recommend that the additional coverage requirements set forth above be delayed 60 days to allow the TNCs time to secure the additional coverage.

**Legislative Recommendation 1: Legislature should isolate TNC use from personal automobile insurance**

Personal automobile insurers are concerned about the duty to defend their insureds, while establishing that the insured used the vehicle for a livery purpose outside the scope of the personal automobile insurance. CDI is concerned about consumer complaints that personal automobile insurers are cancelling the personal automobile insurance of drivers who are driving for TNCs, because those insurers do not insure commercial risks. The Legislature could enact a statute similar to Assembly Bill 1871 (Jones 2010), related to personal vehicle sharing, which holds harmless an owner's personal automobile insurer for losses that occur when the vehicle is being used in a car-sharing program. This would allow Californians to keep their personal automobile insurance when they are using their car for personal or commute purposes, but place the entire insurance burden on the TNCs for Periods 1-3.

**Legislative Recommendation 2: Revisit the "ridesharing" and "casual carpooling" statutes**

CDI has considered whether any TNC use should be covered under the casual car pooling (or ridesharing) provisions of California law or insurance contracts. The CPUC's decision to regulate TNCs made it clear that these services are for-hire common carriers, and thus not casual carpooling. However, casual car pooling is a type of activity that would benefit from more clarity in the law and potentially different treatment. CDI offers to work with the CPUC and the Legislature to better define "incidental" trips, "share-the-expense," and "car pooling" in personal automobile insurance policies. This would allow apps to match not-for-profit drivers with casual riders, promote the share economy, and encourage fewer vehicles on California roadways.

Please contact Senior Staff Counsel Jennifer McCune at (415) 538-4148 or Deputy Commissioner Chris Shultz at (916) 492-3589 if you have any questions.

Page 6

Sincerely,

A handwritten signature in black ink that reads "Dave Jones". The signature is written in a cursive, flowing style.

**DAVE JONES**  
Insurance Commissioner

Cc: Commissioner Michael Florio  
Commissioner Carla J. Peterman  
Commissioner Michael Picker  
Commissioner Catherine J.K. Sandoval  
Assemblymember Susan Bonilla  
Assemblymember Adrin Nazarian  
Carol Brown, Chief of Staff, Commissioner Peevey, CPUC  
Marzia Zafar, Director of Policy and Planning, CPUC  
ALJ Robert M. Mason III, CPUC  
Chris Shultz, Deputy Insurance Commissioner, CDI  
Robert Herrell, Deputy Commissioner, CDI  
Joel Laucher, Deputy Insurance Commissioner, CDI  
Jennifer McCune, Senior Staff Counsel, CDI

**Exhibit B**

Letter of September 9, 2013 from the California Department of Insurance to the California Public Utilities Commission's Director of Policy & Planning Division, pp. 1-2



**DEPARTMENT OF INSURANCE****Legal Division, Rate Enforcement Bureau**45 Fremont Street, 21st Floor  
San Francisco, CA 94105

Jennifer McCune

Attorney

TEL: 415-538-4148

FAX: 415-904-5490

E-Mail: [mccunej@insurance.ca.gov](mailto:mccunej@insurance.ca.gov)[www.insurance.ca.gov](http://www.insurance.ca.gov)

September 9, 2013

Via Email

Marzia Zafar

Director, Policy &amp; Planning Division

California Public Utilities Commission

505 Van Ness Avenue, 5th Floor

San Francisco, California, 94102

Rulemaking 12-12-011

Dear Ms. Zafar:

The California Department of Insurance (CDI) has been tracking Rulemaking 12-12-011 regarding Transportation Network Companies (TNCs). It has come to our attention that there is some confusion about the different options available for TNC insurance. This letter, prepared on short notice, represents a good faith effort to assist the California Public Utilities Commission (CPUC) in making sure that there is insurance protection in effect for drivers, passengers, and property owners in the event a TNC driver is involved in an accident.

**Issue No. 1 – Insurance Requirements**

There appears to be a question of whether TNCs should be required to maintain primary or excess coverage.

CDI is first and foremost concerned with consumer protection. The CPUC can achieve maximum consumer protection by requiring TNCs to maintain primary commercial insurance. Primary insurance will provide the maximum protection because excess insurance normally does not “drop down” and provide coverage until after the underlying insurance is exhausted. In this case, the underlying insurance – the TNC drivers’ personal auto insurance - generally excludes coverage for “liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.” This same exclusion provides that it “does not apply to a share-the-expense car pool.” We believe that this type of exclusion precludes coverage for a TNC driver under a standard personal auto policy when passengers are making a payment that is in excess of expense sharing.

Marzia Zafar  
Director, Policy & Planning Division  
California Public Utilities Commission  
September 9, 2013  
Page 2

Based on informal conversations with TNCs and auto insurers, we understand that personal lines auto insurers have both paid claims and denied claims when drivers with personal lines insurance were transporting a passenger referred by a TNC. This creates confusion and uncertainty in the claims handling process. If the CPUC requires TNCs to maintain \$1 million per incident primary commercial liability coverage, it will alleviate this uncertainty.

While it would provide less protection for consumers, a second option would address the concerns that requiring TNCs to provide this type of primary insurance may be costly and could be restrictive on the newly emerging TNC industry. The second option would be to require TNCs to maintain excess commercial liability insurance that drops down to provide first dollar primary insurance if the driver's policy does not provide coverage, or the primary insurer for any reason fails to, or is unable to, make payment. This alternative might allow for the emergence of new types of insurance policies to address the TNC model. The important thing would be to ensure that the "drop down" language that makes the coverage primary is drafted so that the coverage required by the CPUC responds as primary if no other coverage is available. This model would provide flexibility for the market while maintaining first dollar protection for the consumer. The downside to such coverage is that it imposes a burden on the injured consumer to potentially pursue two sources of insurance and could result in confusion to the consumer with respect to whether the driver's personal coverage or the TNCs' excess coverage would be required to respond to the claim. This would be particularly difficult for claimants without an attorney.

#### **Issue No. 2 - Equivalent transparency**

CDI encourages the CPUC to ensure that TNC policies have a similar level of transparency as the policies required of other vehicles that transport people for a charge. The decision should prescribe the amounts of deductibles and self insurance limits, and these should be made public.

#### **Issue No. 3 - Exculpatory language in terms and conditions**

Many of the TNCs have Terms of Service that provide that the TNC is not liable for any loss, damage or injury. Yet the Proposed Decision mandates certain duties regarding safety to the TNCs. A disclaimer of liability in the TNCs Terms of Service could mislead a consumer into thinking that they do not have recourse against a TNC, when in fact the TNC will be required to maintain \$1,000,000 (one million dollars) in coverage. The CPUC should prohibit waivers that will prevent consumers from having recourse to the insurance.

Marzia Zafar  
Director, Policy & Planning Division  
California Public Utilities Commission  
September 9, 2013  
Page 3

**Conclusion**

CDI commends the CPUC for its efforts in sorting through the issues involved in regulation of these new and quickly evolving Transportation Network Companies. If you have any additional questions, please contact me at 415 538-4148.

Sincerely,



Jennifer McCune  
Attorney

**Exhibit C**

San Francisco Chronicle Article dated April 20, 2014



# Injured pedestrians attest to dangers on S.F.'s streets

**Jikaiah Stevens**, a self-employed hairstylist, was walking in a crosswalk in lower Nob Hill on her way to work Sept. 26 when she was struck by a driver who ran a red light.

"She hit me, which made me fly onto the hood of her car," Stevens recalled. "When she slammed on her brakes, I flew off 15 feet and landed on my head, fracturing my skull and putting blood clots in my brain."

She was in the intensive care unit at San Francisco General Hospital for a week, then recuperated for two months at her parents' house. She has severe back and neck pain, some cognitive problems, and has lost her sense of smell and taste. The driver was underinsured, and Stevens is left with a huge

medical bill and a hard time functioning on her feet all day at work.

To Stevens' knowledge, nothing happened to the driver — and she never apologized or took the blame.

"Nothing in her life changed, and my life is completely different," she said.

It's a familiar story to **Monique Porsandeh**, who was struck Feb. 24, 2013, while walking with a friend in the Marina after a night out. She doesn't remember much, and the driver fled the scene and still hasn't been apprehended.

Porsandeh, a 27-year-old researcher at UC Berkeley, was at S.F. General for a month with a brain injury, broken

leg, shattered pelvis, broken shoulder and vertebrae, several sprains, nerve damage and internal bleeding.

"I was very, very close to dying. But I made it," she said. "A part of me, to be honest, may still be in shock. Sometimes I still feel like I'm in a dream."

After a year of intensive physical therapy and speech therapy, Porsandeh is back living on her own in Berkeley and trying to work, though it's hard. She still has constant pain and is unable to dance or do yoga, two of her passions.

And she's constantly struggling to scrape together money to pay her medical bills. (To

help, visit <http://bit.ly/1eKUvQq>.)

Understandably, Porsandeh bristles when she sees a driver or pedestrian not paying attention or checking their cell phone.

"There's just not enough effort," she said. "I see it every day, and it makes me nuts after what I've been through. I think people are so careless with their lives."

City departments do seem to be taking pedestrian safety seriously — finally.

The San Francisco Municipal Transportation Agency has committed to 24 projects to improve the city's most dangerous streets. District Attorney **George Gascón** has hired an

attorney dedicated to handling vehicular manslaughter cases.

The Police Department has stepped up citations and enforcement of traffic violations and is helping to put together a regional traffic safety event at the May 1 Giants game to educate fans about better behavior on the roads.

But it's all of our responsibility, too.

So as a 3-year-old boy lies in a hospital bed and two young women struggle to put their bodies and lives back together, maybe we can all commit to slowing down, paying attention and being a little kinder on the roads.

It sure beats the alternative.