



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

**FILED**  
5-26-15  
03:06 PM

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 TO ASSIGNED  
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING AMENDING  
THE SCOPING MEMO AND RULING FOR PHASE II PROCEEDING**

Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Agency  
One South Van Ness, 7<sup>th</sup> 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 opening 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 Assigned Commissioner and Administrative Law Judge’s Ruling Amending the Scoping Memo and Ruling for Phase II Proceeding.

### **SUMMARY OF COMMENTS**

In his September 2013 Decision, Commission President Peevey noted that “[t]he 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 commercial purposes.”<sup>1</sup> Except for the personal vehicle designation, there is virtually no difference between TNC services and the services offered by a TCP limousine company and, consequently, no reason to have different standards.

Since these proceedings were opened in December 2012, both the Commission and the California Legislature have taken steps to balance the concerns of public safety and consumer protection against the concern of the TNCs that too much regulation will suppress innovation. The City believes that more can and should be done to protect the public, and that a proper balance can be achieved without unduly upsetting the innovations TNCs have introduced into the prearranged passenger transportation market.

### **PHASE II SCOPING ISSUES**

The City addresses the questions of Commissioner Laine M. Randolph and Administrative Law Judge Robert M. Mason III in the order presented in the Ruling Amending the Scoping Memo.

---

<sup>1</sup> D 13-09-045 at 67.

## **I. Public Safety and Consumer Protection**

### **A. Should the Commission require all TCPs, including TNCs, to inspect vehicles on a biennial, mileage or other basis, and to maintain and make available records of each inspection?**

Yes. The Commission should require that: (1) all TCPs perform annual inspections covering the 19 points currently applicable to TNCs and add mileage as an additional point; (2) an officer of the TCP, including TNCs, must annually verify under penalty of perjury, that required inspections have been performed; (3) TCPs, including TNCs, make records of individual vehicle inspections available to the Commission's Safety and Enforcement Division ("SED") on request; and (4) TNCs provide annual aggregate reporting on inspections.

#### **1. Mileage**

The SFMTA, which issues permits and regulates taxis operating in the City and at SFO, recognizes that sedans and SUVs whose mileage exceeds 375,000 miles are not appropriate for continued commercial use.<sup>2</sup> The mileage maximum helps the City ensure the overall quality of vehicles used to convey members of the public. This standard, along with San Francisco's model year restrictions, also allows drivers to save money by driving better, more fuel efficient vehicles. The same mileage maximum limits should apply to all TNCs and TCPs with a seating capacity of eight (including the driver).

#### **2. Scope of Annual Reports**

The Commission should require all TNCs and TCPs to report the results of vehicle inspections to the Commission in aggregate form, indicating the number of vehicles inspected by maximum seating capacity, the number of vehicles that passed inspection and the number of vehicles that failed to pass inspection or were disqualified based on mileage caps. Finally, TCP and TNC permit holders must report to the Commission what action it has taken to ensure that

---

<sup>2</sup> SFMTA inspects all taxis with fewer than 200,000 miles on an annual basis. Vehicles with more than 200,000 miles are inspected every six months. Vehicles with more than 375,000 miles are decommissioned. (S.F. Transportation Code § 1113(q) and (s)(1).)

vehicles failing to pass inspection did not operate as a TCP or TNC vehicle unless or until it was able to pass inspection.

**B. Who should be allowed to conduct the vehicle inspections?**

Only automotive technicians licensed by the California Bureau of Automotive Repair should be allowed to conduct inspections.

The ordering paragraph of D.13-09-045 states:

We require the Transportation Network Company (TNC) or an authorized third party facility licensed by the California Bureau of Automotive Repair to conduct and ensure that each vehicle passes a 19-point vehicle inspection prior to allowing a vehicle to be driven as part of the TNC's service, and annually thereafter, and for the TNC to maintain the record of such inspections in case of an audit.

Because TNCs have the option of inspecting vehicles themselves or having inspections completed by a professional, there really was no "standard." As noted in a February 16, 2015 letter from SED Acting Director Denise Tyrell to Uber's Senior Counsel, Krishna Juvvadi, some TNCs use "peer mentors" to perform this service, but "relying on a licensed facility to conduct the required vehicle inspection is safer than relying on an individual without the experience or training to conduct such an inspection."

It is unclear what a "peer mentor" is, but within the context of the ordering language and Acting Director Tyrell's letter, it is likely that a "peer mentor" is a TNC employee and could be someone with no automotive expertise whatsoever. A meaningful vehicle inspection regulation would require a 20-point vehicle inspection for all TCPs, including TNCs, to be performed by automotive technicians licensed by the California Bureau of Automotive Repair.

**C. Should the Commission apply the 19-point vehicle inspections checklist in D.13-09-045 to all TCP vehicles except those TCP vehicles already subject to a statutory inspection program?**

Yes, but the 19-point inspection should be expanded to a 20-point inspection as described in A, above, and should apply equally to TCPs and TNCs.

**D. What driver-specific and/or vehicle-specific information, if any, should the Commission require TNCs to provide, and how does collection of such data by the Commission enhance consumer protection and public safety beyond the TNCs' own quality control, such as driver rating systems?**

The Commission must have effective tools to verify compliance with TNC regulations. At the present time, it is unclear how the Commission is able to validate that vehicles have been inspected and that drivers are free of disqualifying criminal records and driving histories.

TNCs have previously asserted that the market regulates itself – if passengers don't like the service, they can give the driver a poor rating. If enough passengers give the same driver a poor rating, the TNCs remove the driver from service. This model may be effective for customer service issues, but not for protecting public and passenger safety. Passengers who give a poor rating to a driver are likely to base the rating on driver attitude and/or quality of the ride. But a pleasant TNC driver in San Francisco in 2015 with a 2010 felony domestic abuse conviction in Boise, Idaho is unlikely to get a bad review.

TNCs argue that disqualifying criminal histories are detected in the applicant screening process. But even if TNCs in California are complying with the background checks required by Commission regulations (which is not clear), such background checks are only as reliable as the information provided by the applicant. Identity theft is rampant<sup>3</sup> and can be an effective means of avoiding detection. For example, in Houston recently a TNC driver who had been cleared by the private background check firm Hirease, based on information provided by the applicant, was later subjected to a fingerprint-based background check. The fingerprint background check revealed the following: the driver had 24 aliases, five different dates of birth, 10 different social security numbers and an outstanding arrest warrant.<sup>4</sup> It seems reasonable to conclude that some TNC drivers in California have similar records.

---

<sup>3</sup> According to the Consumer Sentinel Network, an online database that collects fraud and identity theft complaints available only to law enforcement, 325,000 identity theft complaints were received in 2014, more than any other type of complaint. <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2014/sentinel-cy2014-1.pdf>.

<sup>4</sup> <http://www.houstonpress.com/news/uber-tells-texas-lawmakers-its-background-checks-are-totally-fine-7372997>

At the same time, it is unclear how amassing data banks of driver and vehicle information in the SED will advance public safety. A middle ground can be achieved by requiring four types of TNC reporting: (1) annual reports of aggregated data regarding vehicle inspection (see §A, above), (2) quarterly reports of aggregated data on driver-applicant pass rates; (3) immediate and aggregate quarterly reporting of accidents requiring SR 1 reports<sup>5</sup>, including date of accident, name and CDL of driver, vehicle license plate and VIN number, and name and contact information of witnesses; and (4) immediate and aggregate reporting of known contact between law enforcement and TNC drivers while engaged in TNC services, excluding parking and moving violations that do not result in an accident.

When notified of an accident or driver contact with law enforcement, the SED could initiate an investigation to determine whether TNC regulations were violated and whether the TNC should be penalized.

Quarterly reports should include the following aggregated data:

- Number of driver applicants during the reporting period;
- Number of driver applicants disqualified on the basis of criminal history during the reporting period;
- Number of driver applicants disqualified on the basis of driving record during the reporting period;
- Number of driver applicants that have successfully completed driver training during the reporting period;
- Number of existing drivers removed from TNC's service during the reporting period and the reason for removal by specific category (i.e., passenger complaints, accident, lapse of insurance, suspended license, illegal solicitation);
- Number of suspended drivers who were reinstated during the reporting period and the reason for reinstatement;

---

<sup>5</sup> These reports are required under California Vehicle Code § 16004(a) if any collision results in property damages in excess of \$750 or bodily injury or death to any person

- Number of drivers involved in accidents while in TNC service during the reporting period; and
- Number of driver contacts with law enforcement during the reporting period

Finally, all aggregate reports should be posted on the CPUC's website upon receipt by the SED.

**E. Should the Commission require TNCs to obtain and/or provide information on driver suspensions/deactivations and subsequent reactivations? What frequency and what level of detail are reasonable?**

Yes. This information could be captured in the quarterly report referenced in D, above.

**F. How should driver-training programs be designed to adequately protect consumers and enhance public safety?**

At a minimum, regulations should be developed to provide uniform training on:

- safe driving in highly congested areas;
- awareness of bike lanes and local ordinances requiring drivers to share the road;
- assisting passengers in an out of vehicles when needed;
- what to do in the event of an accident; and
- how to handle intoxicated passengers.

To facilitate the delivery of driver training programs, the Commission should require all TCPs, including TNCs, to develop Commission-approved video or computer-based interactive training that requires the trainee to respond to questions before advancing to the next section, and which issues a certificate to applicants who successfully complete the training. Finally, completion data should be subject to audit by the SED.

**G. Should the Commission require that all TNCs transporting unaccompanied minors comply with the requirements set forth in D.97-07-063?**

Yes.

The City has consistently advocated for fingerprint-based criminal background checks for all drivers because biometric identifiers, such as fingerprints, provide the most accurate, verifiable starting point for background checks. The TNCs have consistently advocated against

the need for fingerprint-based background checks as an unnecessary, expensive and burdensome regulation that would interfere with their business models and undermine innovation.

To date, both the Commission and the State legislature have adopted the TNCs' position on the rigor of criminal history background checks. But even if the industry preferred solution was the most protective of adult public safety, which the City disputes, it is insufficient for services provided to unaccompanied minors.

The application form asks TNC applicants to “[s]tate affirmatively whether Applicant intends to engage primarily in the transportation of unaccompanied infants and children under the age of 18 years ...” If so, the application implies, the TNC applicant is required to conduct DOJ Trustline background checks on drivers who will provide such services. But nothing in the existing TNC regulations refers to driving unaccompanied minors (primarily or not), nor is “primarily” defined.

The Airport tracks all TNC trips to and from the Airport, and that number is steadily increasing. In April 2015, a total of 221,614 TNC Airport trips were made by four companies. Assuming there are more rides in and around the City than rides specifically to and from the Airport, a TNC that does not “primarily” provide services to unaccompanied minors, may still be providing thousands of such rides every month by drivers whose backgrounds have passed a background check predicated on information provided by the driver. Although the rides tracked by SFO in April 2015 are undoubtedly fewer in number than the rides within the City's boundary, if only 5% of those rides involved transporting unaccompanied minors, that means 11,081 unaccompanied minors could have been transported around San Francisco in April by drivers who have not undergone the DOJ Trustline background check.

It is not clear whether TNCs even know if their drivers are providing services to unaccompanied minors, nor are they required to know under the existing regulations. The Commission should require TNCs to report whether they allow their drivers to transport unaccompanied minors and, if so how the TNC determines whether a ride request will result in a ride for an unaccompanied minor. Any TNC that does not have a means of determining whether



a ride request is for transporting unaccompanied minors should be required to develop a method for making that determination, which method must be approved by the SED and audited.

Unless a TNC prohibits transporting unaccompanied minors *and* has a Commission-approved means of verifying that a ride request will not result in the transportation of unaccompanied minors, the Commission should amend the background check regulation and require the Trustline background check referenced in D.97-07-063 for all TNC drivers.

According to its website, Trustline “is the only background check authorized by state law to use three databases that the general public, *including private investigators and private background check companies*, cannot access. These databases include fingerprint records from the California Department of Justice Criminal History System; the Child Abuse Central Index of California; and fingerprint records of the FBI Criminal History System.” (Trustline.org; emphasis added.)

As the market for application based commercial transportation services continues to expand, one can easily imagine that the adults in a busy household with children of various ages going to different schools are frequently confronted with conflicting work and school schedules. While some parents would never consider arranging for a TNC to drop their children off at school, one can also imagine that, in a pinch, a TNC ride would solve that problem. But in such circumstances, TNCs are no different than the “kids shuttles” described in D.97-07-063 and the same level of scrutiny should be applied.

**H. In light of California’s new statutory insurance requirements for TNCs, should TNCs be required to file certificates of insurance electronically that may only be canceled with a 30-day notice form the insurance company, as currently required of TCPs, as set out in GO-115 and Resolution TL-19105?**

Yes.

**I. Should the Commission reconsider the \$20,000 maximum fine or informal staff citations for violations of all TCPS, including TNCs?**

Yes. Although TNCs are new to the commercial passenger transportation industry, in a few short years, they have completely altered the landscape. Penalties for failing to comply with

regulations must be revised to reflect the changing nature of charter-party carrier services. The City urges the Commission to develop a formal, reasonable and graduated penalty structure calculated to gain consistent compliance with regulations.

## **II. Fostering Innovation**

### **A. Should any improvements be considered to the TCP and TNC application process?**

Yes.

As discussed in § G above, regulations must be developed to reliably determine whether TNCs provide service to unaccompanied minors and, if they do, to require DOJ background checks on all drivers. This requirement should be clear in TNC applications.

### **B. Are the Commission's present trade dress rules adequate to ensure public safety and consumer protection, and to encourage innovation?**

No.

Having a distinctive, clearly visible trade dress signals to pedestrians, passengers waiting for a ride and other drivers that a vehicle is engaged in a commercial driving activity. For other drivers on the road, trade dress that is visible from all sides of a vehicle gives a warning to beware of frequent, quick stops for pick-up and discharge of passengers. It also assists with parking and traffic enforcement.

Clear and distinctive trade dress also helps passengers quickly identify their rides – a safety issue for both passengers and drivers. The MTA has anecdotal evidence from two different women that men jumped into their cars while they were stopped on a street in the City and requested to be taken to their destinations. The women drivers were likely stopped at a curb looking at their cell phones – something that happens thousands of times a day when TNC drivers are waiting for a ride request.

Unfortunately, removable trade dress has proven ineffective at SFO because drivers frequently do not use it. During the last reporting period, 105 TNC drivers were cited at SFO for improper or no trade dress. Because traffic and curbside enforcement cannot be everywhere at all

times, the City assumes the actual number is greater at the Airport and immeasurable in the City's streets.

At the same time, because TNC vehicles are "personal" vehicles, TNCs have argued against permanent trade dress. To gain compliance from TNC drivers, the Commission should require TNCs to predicate tip payment on whether a TNC vehicle is displaying trade dress. Conceivably, before the passenger concludes the transaction, the app asks whether the vehicle is displaying trade dress. If the answer is no, then there is no tipping option; if trade dress is on display, the app allows the passenger to proceed with tipping the driver. Such a requirement would improve driver compliance without requiring permanent trade dress.

### **III. Additional Issues**

The City requests the Commission amend the scope to: (1) clarify the definition of "personal vehicle"; and (2) include the issues previously identified in the September 2013 Decision for review a subsequent workshop.

#### **A. Clarification of Definition of "Personal Vehicle"**

The operative language in D.13-09-045 provides that a "... TNC is defined as an organization ... that provides prearranged services for compensation ... to connect passengers with drivers using their personal vehicles."<sup>6</sup> It is unclear whether "personal vehicles" means the driver must be the registered owner, or someone else who has the owner's permission to use the vehicle as a TNC. The City's understanding is that one household may have a single vehicle that has been inspected, and two approved TNC drivers. But enforcement personnel at SFO recently provided anecdotal evidence that individuals are leasing multiple vehicles and subletting them to TNC drivers. This is not what was contemplated in these proceedings. The City requests the scope of Phase II be expanded to clarify the meaning of "personal vehicle" in the context of TNC operations.

---

<sup>6</sup> D.13-09-045 at 65.

**B. Workshop Issues**

Included in the Order of the September 2013 Decision is a determination that the Commission will convene a workshop within one year to address the following issues: safety, competition, innovation, accessibility, congestion, the California Environmental Quality Act and other pollution related issues.” Although it appears that safety, competition and innovation may be encompassed within the Amended Scoping Memo, the remaining topics are significant and should be addressed.

**CONCLUSION**

In their present form, TCP regulations, including those covering TNCs, are in need of re-balancing. While data collection on individuals does not improve public safety or strengthen consumer protection, aggregate reporting will assist the SED in targeting enforcement efforts without unduly burdening TCPs. Finally, the City strongly recommends that all TCP drivers, regardless of certification designation or nature of passengers (adults or unaccompanied minors), must be subject to fingerprint-based background checks.

Dated: May 22, 2015

Respectfully submitted,

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

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