



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

FILED

6-08-15
04:59 PM

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

R.12-12-011

**REPLY COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT AND SAN
FRANCISCO MUNICIPAL TRANSPORTATION AGENCY 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, 7th Floor
San Francisco, CA 94013
(415) 701-4720

John L. Martin
Airport Director
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128
(650) 821-5000

These reply comments are submitted on behalf of the San Francisco International Airport (“SFO” or “Airport”) and the San Francisco Municipal Transportation Agency (“SFMTA”), collectively, “the City” in response to opening comments of other parties to the Assigned Commissioner and Administrative Law Judge’s Ruling Amending the Scoping Memo and Ruling for Phase II Proceeding.

SUMMARY OF COMMENTS

Without reiterating its opening comments, the City submits this reply to the comments of other parties regarding vehicle safety and consumer protections.

The City continues to advocate for requiring all TNC drivers to pass fingerprint-based criminal history background checks – regardless of whether TNCs require account holders to be at least 18 years old – and supports modifying regulations in a manner that will allow the Commission to readily verify that the TNCs are complying with the law. Rather than providing reply comments to each of the opening comments filed in response to the questions posed by the Commission, the City’s reply broadly addresses three issues: (1) inspections of TNC vehicles and TCP limousines; (2) TNC drivers; and (3) meaningful verification of compliance.

I. All Vehicles Operating Under Permits Issued to Charter Party Carriers of Passengers Must Be Physically Inspected on an Annual Basis by a Licensed Mechanic

A. TNCs Must be Inspected by Licensed Mechanics

The vehicle inspection standard articulated in D. 13-09-045 has resulted in a hodgepodge of inspection practices. While Sidecar, Lyft and Uber all state that the 19-point vehicle inspection is adequate, only Sidecar requires that the inspection be conducted by a certified mechanic (Sidecar’s opening comments, p. 2.)¹ Lyft inspections are conducted by “designated driver

¹ Shuddle does not address inspections at all.

inspectors” who are “experienced Lyft drivers.” (Lyft’s opening Comments, p. 5) Uber does not divulge who conducts inspections of vehicles used in the UberX service, although on December 24, 2014, it asked the CPUC’s Safety and Enforcement Division whether it was “permitted to stop using licensed mechanics to conduct vehicle inspections and instead rely on a ‘peer mentor’ similar to the practice currently used by the TNC Lyft.”² Lyft also argues that requiring third party inspections would “add cost and friction to the on-boarding process ... [and] discourage competition between TNCs ...” (*Id.*)

But the cost of having vehicles inspected by certified mechanics does not seem to have discouraged Sidecar which, based on data available to SFO, has a considerably smaller market share than either Lyft or UberX. Further, the Commission’s own Safety Enforcement Director has affirmatively stated that “...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.”³

TNCs now provide millions of rides in California every year.⁴ It is unclear how many rides are provided by sedan-type TCPs, such as limousines, but if TCP limousines offer even a fraction of the rides offered by TNCs in California, it is conceivable that scores of millions of rides occur each year by TNCs and TCP limousines on California’s streets and highways. The 19-point safety inspection is potentially meaningless unless it is performed by a mechanic certified by California Bureau of Automotive Repair.

² See February 6, 2015 letter from Denise Tyrell Acting Director, Safety and Enforcement Division to Krishna Juvvadi, Senior Counsel Rasier-CA LLC (aka UberX).

³ *Id.*

⁴ From October 2014 through April 2015, TNCs have logged 1,124,563 trips to pick-up or drop-off passengers at SFO; and in calendar year 2014, TCP limousines logged 1,290,810 trips at SFO.

B. The Commission Should Require TCP Limousines to Undergo the Same Inspection Protocol as TNCs

In its opening comments, the Greater California Livery Association (“GCLA”) asserts that “CPUC regulation of TCP commercial vehicles have (sic) evolved over many decades and are sufficient to protect public safety.” (GCLA Opening Comments, p. 2.) In fact, existing regulations do not require physical inspections of limousines at all, unless the limousines are “modified.”

Specifically, Commission General Order (“CGO”)157-D governs the operations of charter party carriers of passengers. Part 2.05 defines “limousine” as “ ... any sedan or sport utility vehicle ... with a seating capacity of not more than 10 passengers including the driver ...” Part 4.02 of CGO 157-D is entitled “Safety Requirements Before Operation,” and provides that “[a]ll vehicles operated under each certificate or permit shall comply with the requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.”

Chapter 6.5 of Title 13 of the California Code of Regulations, which addresses “Motor Carrier Safety,” “applies to vehicles listed in Vehicle Code Sections 545(k), 34500 and 34500.1 and their operation.” (13 CCR, §1200.) Vehicle Code §545(k) refers to school buses; §34500 refers to trucks and trailers, buses, general public paratransit vehicles and “modified limousines,” and §34500.1 refers to tour buses.

CA Pub. Util. Code § 1042(d), which defines “modified limousines,” provides:

As used in this section and Section 1042.1, “modified limousine means any vehicle that has been modified, altered, or extended in a manner that increases the overall wheelbase of the vehicle, exceeding the original equipment manufacturer's published wheelbase dimension for the base model and year of the vehicle, in any amount sufficient to accommodate additional passengers with a seating capacity of not more than 10 passengers including the driver, and is used in the transportation of passengers for hire. For purposes of this subdivision, "wheelbase" means the

longitudinal distance between the vertical centerlines of the front and rear wheels. (CA Pub. Util Code §1042(d).).

Section 1042.1 provides that “Not later than January 1, 2015, the commission shall provide the Department of the California Highway Patrol with a list of each passenger stage corporation's modified limousines and their terminal locations in order for the department to promulgate regulations pursuant to § 34500.4 of the Vehicle Code.”

Finally, Vehicle Code §34500.4 provides, in relevant part:

(a) Not later than July 1, 2016, the Department of the California Highway Patrol shall implement a program to conduct safety inspections of modified limousine terminals that are operated by passenger stage corporations pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code or by charter-party carriers of passengers pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code).

(b)(1) The inspection program shall include, but is not limited to, the safe operation of the vehicle, the installation of safety equipment, the retention of maintenance logs, accident reports, and records of driver discipline, compliance with federal and state motor vehicle safety standards, the examination of a preventative maintenance program, and, if ownership of the modified limousine has been transferred, the transmission of relevant safety and maintenance information of the limousine.

(2) Pursuant to the safety inspection program, the department shall conduct an inspection of each terminal of a charter-party carrier of passengers and passenger stage corporation that operates modified limousines at least once every 13 months.

When these authorities are stitched together, two things become clear: (1) limousines operating under a TCP are not subject to *any* physical inspection whatsoever unless they are “modified”; and (2) TNC vehicles, which cannot be “modified,”⁵ must be physically inspected annually.

The City strongly urges the Commission to reconcile these differing standards by applying the vehicle safety inspection protocol for TNCs to unmodified TCP limousines.

⁵ D.13-09-045, p. 28.

II. Criminal Background Checks Must be Based on Fingerprints for TNCs and TCP Drivers

As the City has previously argued, criminal history background checks based on a driver's fingerprints rather than his or her social security number is the most accurate form of determining whether a driver applicant has a record that would disqualify him or her from performing TNC.

A. Drivers for TNCs That Provide Services to Unaccompanied Minors Must Pass Fingerprint-based Criminal History Background Checks

1. Shuddle's Background Checks are Insufficient

Commission Decision 97-07-063 requires that entities specializing in the transportation of children conduct a background check of their drivers using the California Department of Justice's Trustline Unit (Decision 97-07-063, p. 40). Shuddle, a TNC that specializes in the transportation of children, argues that TNCs transporting unaccompanied minors should not be required to comply with the requirements of Decision 97-07-063 because the background check services that Shuddle voluntarily uses are cheaper, quicker, and more thorough than the Trustline registry. The Commission should reject Shuddle's argument for three reasons.

First, although Shuddle may well save money and time by using criminal background check services that do not rely on fingerprints, the Commission has an obligation to protect the public (CA Pub. Util. Code § 5352), and as the Commission noted when it required passenger stage corporations to conduct criminal background checks using the Trustline system, "[t]he protection of the children of this state should have the highest priority." (Decision 97-07-063, p. 8.) The Commission has already determined that requiring passenger stage corporations that transport children to use a fingerprint-based criminal history background check service is reasonable to ensure the safety of those children.

Second, Shuddle’s argument that the criminal background check system that it uses is more effective than Trustline is unpersuasive. Shuddle contends that Trustline is ineffective because “California databases do not cover jurisdictions outside of the State.” (Shuddle’s Opening Comments, p. 3.) However, as Shuddle notes, the Trustline system does not rely solely on the California DOJ’s Criminal History System, it also accesses the FBI’s nationwide Criminal History System. (Shuddle’s Opening Comments, pp. 4-5.) Based on Shuddle’s description of its criminal background check system, it appears that Shuddle does not require its drivers to submit to fingerprint-based background checks. As the City noted in its opening comments, even if such background check systems could provide as complete a criminal history check as state and federal law enforcement agencies provide, they do not adequately protect the public. Only a fingerprint-based criminal history check can ensure that a prospective driver is not using another’s identity to avoid disclosure of a criminal record that would render him or her unfit to transport children.⁶

Finally, Decision 13-09-045 requires only that TNCs conduct criminal history background checks on their prospective drivers. It does not contain any specifications about how those background checks are to be conducted. (Decision 13-09-045, p. 26.) Instead, it is up to the TNC to decide how thorough its background check process for prospective drivers will be. As the Commission has noted, it is inappropriate to leave this determination to the individual providers when the drivers are transporting children unaccompanied by their parents. “Leaving child safety concerns to the discretion of the each individual operator is not a conscionable decision, and nobody suggests that is wise.” (Decision 97-07-063, p. 8.)

⁶ Shuddle’s asserts in this proceeding that the Trustline system is outdated and that its own system better protects the public. Shuddle’s website however, appears to have a different view of Trustline’s efficacy. In touting the qualifications of its drivers the Shuddle website highlights the fact, when applicable, that a particular driver is “Trustline registered.” https://shuddle.us/?gclid=Cj0KEQjw-tSrBRck8bzDiO__gbwBEiQAk-D31bUMnIT2gGW5O97OV609sFtSCSH_WPFhKhH8LNQLLTiaAjeS8P8HAQ.

2. TNC Terms and Conditions Requiring Account Holders to be 18 Years Old or Older are an Ineffectual Means of Preventing the Provision of Services to Unaccompanied Minors

Lyft, Sidecar and Uber all state that their terms of service prohibit anyone under the age of 18 from using their services and so the issue of requiring drivers to submit to a fingerprint-based background check is moot. (Sidecar’s opening comments at p. 8, Uber’s comments at p. 7, Lyft comments at p. 8.) But it is common knowledge that TNCs are used by unaccompanied teen and pre-teen minors, typically with the support and encouragement of their parents. For example, in “Uber is the New Family Chauffeur,” Wall Street Journal reporter Diane Kapp found that parents feel safe using Uber because they can see who the driver is and they know the license plate number of the vehicle. One San Francisco mother, Kapp reports, has three children – ages 12, 14 and 16 – who are “uber Uber users.”⁷ The same article reports that Bay Area parents have used Uber to take their children to soccer, to facilitate a 14-year old boy’s dating relationship with a girl two counties away from his San Jose home, and to shuttle kids between separated or divorced parents.

Similarly, Bloomberg News reports that teenagers using UberX is a growing trend. One 14 year old uses UberX to get home from school, and another family allows their 17 and 13-year old sons to use it, but not their 11 year old daughter.⁸ (Also see “Harried Parents Embracing Uber to Move Kids Around Town ,” Washington Post, <http://wapo.st/1E4dGe4>.)

The City anticipates that TNCs will argue they have no way of stopping parents from allowing their kids to use their accounts, and that it is not realistic to put TNC drivers in the

⁷ <http://on.wsj.com/1Ar11R3>;

⁸ “Busy Parents ‘Uber’ Kids Around for a Carpool Alternative,” <http://bloom.bg/1AxzcLV>;

position of having to determine if a young passenger is 18 or 17.⁹ But what about 14 year olds? Or 12 year olds? Unless the Commission was to adopt a regulation requiring TNC drivers to check IDs of all unaccompanied passengers prior to commencing a ride unless they objectively appear to be 25 or older – an impractical and unenforceable regulation – the Commission should simply require all TNCs to check driver criminal histories through fingerprint-based background checks.

Finally, TNCs are likely to assert that requiring fingerprint-based criminal background checks will “stifle innovation” because they are more expensive to process than using a driver’s social security number. That argument is baseless – the innovation is already here and the incremental added cost of fingerprints will not turn the clock back.

III. Verifying Compliance

As the City notes in its opening comments, the Commission should require quarterly reports on data points that reflect compliance with vehicle and driver safety standards. The City agrees with TNC comments questioning the relevance of data regarding driver suspensions based on service (e.g., a rude driver); but requiring quarterly reports on the number of drivers who apply to each TNC and the number who are rejected on the basis of safety concerns (disqualifying driving records or criminal histories), existing drivers who have been terminated or suspended based on safety concerns (serious accidents while engaged in TNC services that result in injuries, physical altercations with passengers, citations for reckless driving, detention arrests while engaged in TNC services) and data on vehicle inspections (numbers of vehicles inspected and the number that failed inspections) will provide some measure of verification that

⁹ Perhaps the Commission could inquire whether any of the TNCs referenced in these reports terminated the accounts of the parents who use these services to get their children from Point A to Point B.

TNCs are complying with the law and regulations. The quality of the reports will also assist the Commission in determining whether to investigate patterns of non-compliance.

IV. Workshop Issues

As the City noted in its Opening Comments, the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling for Phase II of Proceeding does not address several critical issues related to TNC service – pollution, congestion, and accessibility. The Commission's Decision 13-09-045 recognized the importance of these issues, promising to address them at a workshop to be conducted within a year of issuance of the Decision (Decision 13-09-045, p. 74), and these issues were discussed to some extent at the Commission's November 4, 2014 en banc proceeding. The Commission did not, however, issue findings, a report, or other document resulting from the en banc proceeding, and it has not provided the parties an opportunity to recommend amendments to the Commission's existing TNC regulations to address these issues. The City urges the Commission to order a third phase of this proceeding to consider how to reduce TNCs impact on pollution and congestion, and to determine how best to ensure that TNCs provide service to persons with disabilities.

CONCLUSION

For the reasons stated herein, The City urges the Commission to require: (1) unmodified TCP limousines to undergo the same vehicle inspection protocol required of TNCs; (2) all vehicle inspections to be performed by a mechanic certified by California Bureau of Automotive Repair; (3) criminal history records of all TCP and TNC drivers be based on fingerprints, not social security numbers; (4) TNCs to submit quarterly reports of aggregate data to assist the

Commission in determining compliance with safety regulations; and (5) the parties' participation in a Phase III workshop to address TNC impact on pollution, congestion, and accessibility.

Dated: June 8, 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