

**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

**REPLY COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT, THE SAN
FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, AND THE SAN FRANCISCO
COUNTY TRANSPORTATION AUTHORITY TO PROPOSED DECISION AUTHORIZING
PILOT TEST PROGRAM FOR AUTONOMOUS VEHICLE PASSENGER SERVICE**

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These Reply Comments are submitted jointly by the San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco International Airport (“Airport” or “SFO”) and the San Francisco Transportation Authority (“Authority”)¹, collectively “SF” or “the City”.

INTRODUCTION

As stated on the Commission’s website, the Commission’s role is to regulate services provided to the public, protect consumers, safeguard the environment, and assure Californians’ access to safe passenger transportation services.² The City urges the Commission to fulfill this mandate by implementing the two proposed pilot programs for autonomous vehicles (“AVs”) for TCP passenger service as set forth in its Proposed Decision (“PD”) with the minor adjustments the City suggested in its Opening Comments and proposed modifications to the Order.³

Although AVs have the potential for delivering safe transportation service, companies testing AVs on California roads have not, as yet, reached a level of safe operation to assure both consumers and the general public of their safe deployment on public roads without significant governmental regulation and oversight. There have been a significant number of incidents (“disengagements”) reported to the California Department of Motor Vehicles (“DMV”) by the companies testing AVs that warrant public concern if these vehicles are now allowed full passenger service deployment.⁴ For example, Drive.ai reported to DMV that a disengagement occurred as a result of one AV swerving within a lane and making “jerky or uncomfortable braking.” The company also reported that another AV became uncertain of its location (a “localization error”), and experienced discrepancy in data from different sensors on the vehicle. GM Cruise reported that its on-board sensors did not always capture all the data on vehicles approaching in opposite lanes, and its system did not always combine all the data for analyzing the movement of another vehicle entering an intersection. In addition, several of their vehicles planned a turn into a lane of traffic where there was insufficient space to do so, failed to

¹ The Transportation Authority Board consists of the eleven members of the San Francisco Board of Supervisors, who act as Transportation Authority Commissioners.

² <http://www.cpuc.ca.gov/>

³ See the City’s Openings Comments and proposed modifications to the Order attached as Appendix A.

⁴ <https://www.mercurynews.com/2018/05/01/self-driving-cars-shortcomings-revealed-in-dmv-reports/>

give way to another vehicle trying to enter a lane, and planned a turn with oncoming traffic quickly approaching. Waymo indicated that an AV failed to see a “no right on red” signal, and the company cited hardware and software problems requiring disengagement. Locally, a GM Cruise AV was cited by the San Francisco Police Department for driving through a crosswalk and not yielding to a pedestrian, a violation of local law, and a potential threat to pedestrians lawfully crossing the street.⁵ Finally, everyone is aware of the tragic fatality that occurred in Tempe, Arizona on March 18, 2018.⁶

But, instead of acknowledging the role government must play in ensuring public safety, the AV industry asks the Commission to move ahead with allowing AVs to be put into revenue passenger service with little or no governmental regulation. We respectfully disagree with this approach and urge the Commission to move forward with the two proposed pilot programs.

COMMENTS

A. The Commission’s Proposed Pilot Programs

The overall purpose behind the Commission’s proposed pilot programs is to find out how AVs put into passenger service will interact with the urban landscape, customers, and the general public, and collect information that can inform a future AV Passenger Service Permit program. AVs are a new technology that have yet to be deployed in California other than through preliminary testing by several companies. Some of the questions raised concerning putting AVs into passenger service include: (1) will AVs comply with local laws regarding stopping, standing, double parking, and speed limits? (2) will deployment of these AVs increase urban congestion as a result of driverless, deadhead miles, where vehicles travel with no passengers? and (3) how will passengers alter a trip destination after entering into an AV or safely exit an AV before it arrives at a final destination in the event of an emergency or for another reason? In order to answer these questions, and ensure that public safety is adequately protected, an incremental pilot program of a limited duration is more than warranted.

The City routinely implements pilot programs to inform regulations for emerging mobility services in order to protect public safety, understand and study the new service’s needs and impacts on

⁵ <http://sanfrancisco.cbslocal.com/2018/03/27/self-driving-car-ticketed-san-francisco/>

⁶ <https://www.nytimes.com/2018/03/19/technology/uber-driverless-fatality.html>;
<https://www.nytimes.com/2018/03/23/technology/uber-self-driving-cars-arizona.html>

the urban environment, prohibit potential nuisance activity - such as obstructions in the public right-of-way, ensure compliance with local laws, and collect data.⁷ This approach reflects a desire by the City to gradually roll-out new mobility services without overwhelming the existing status quo and protect public safety. While the City acknowledges that a number of companies have conducted significant testing of AVs on public streets as well as simulated driving, this is not a substitute for understanding how public safety can be ensured when AVs are used to carry members of the public. GM Cruise argues that its AVs are the safest thing around and the Commission should commit to a schedule of finalizing full-scale deployment of AVs into passenger service.⁸ However, the traffic collision reports posted on the DMV's website suggest otherwise. Fourteen collision reports have been filed with DMV during the first quarter of 2018. Eleven of these reports (79%) involve GM Cruise and all of these collisions were in San Francisco.⁹ The story in 2017 is similar. A total of 27 collisions were reported in 2017, 22 of which involved GM Cruise (81%) and *all* occurred in San Francisco as well. Given that public safety is at risk, the City implores the Commission to ensure that California is not jeopardizing the safety of its people merely to accommodate a rush to commercialize new technology.

B. 90-Day Operational Experience Requirement

GM Cruise and Lyft contend that either the 90-day operational requirement apply per entity (as opposed to individual vehicles) or not at all.¹⁰ The City disagrees. The Commission's rationale for including such a requirement is to "ensure that the actual vehicles that will carry passengers obtain on-road experience in California before beginning such service." Since we do not know the details about each manufacturer's internal testing and development practices, including when and where they are tested, the City would like to ensure that their AVs have undergone a minimum amount of practical operation and interaction with pedestrians, bicyclists, seniors, and children, among other vulnerable road users, before accepting passengers on a commercial basis. Further, each TCP-AV test permit applicant must report the number of disengagements and number of collisions during this 90-day

⁷ <http://abc7news.com/traffic/sfnta-votes-in-favor-of-pilot-program-for-dockless-scooters/3415717/>;
<https://www.sfnta.com/blog/sfnta-creates-pilot-study-electric-stationless-bike-sharing>

⁸ See GM Cruise's Opening Comments, p. 3, 5-7.

⁹ See https://www.dmv.ca.gov/portal/dmv/detail/vr/autonomous/autonomousveh_0l316

¹⁰ See GM Cruise's Opening Comments, p. 8; Lyft's Opening Comments, p. 2.

period. This is a common sense approach to ensure that public safety is adequately protected before any passengers are transported in these vehicles.

The Commission should also: (1) elaborate on how the agency will use the data accumulated during this period to determine whether a TCP-AV permit should be issued, (2) set a mileage minimum that demonstrates consistent, active testing of AVs for this period, and (3) require that TCP-AV test permit applicants operate in the specific environment where they will eventually be deployed – for instance, San Francisco, Los Angeles, or Fresno. Finally, the Commission should cap the number of AVs each permittee may operate in densely populated urban centers and require them to provide a 10-day notice to the local jurisdiction where the permittee intends to operate prior to putting an AV into passenger service.

C. No Airport is Required to Allow AVs to Operate on Their Premises

The PD prohibits Driverless AVs at airports and requires TCP-AV permit holders to provide the Commission with a plan for ensuring that Driverless AVs will not operate at airports. Waymo proposes alternative language concerning operation of driverless AVs, which suggests Waymo’s failure to understand the authority that municipal airports have over the businesses that operate on their premises. Specifically, Waymo asserts the following alternative operational plan for airport service:

[TCP AV permit holders should] ‘submit to the Commission an airport interaction plan, which has received input from at least one airport in California.’ Waymo then proposes that ‘upon approval of this permit by the Commission, the plan shall be shared with any airports to which the permitted entity provides paid passenger service.’ *This modification eliminates the PD’s prohibition on providing Driverless AV Passenger Service at airports for the purposes of deployment while ensuring that entities take the necessary measures to collaborate with airports on the best methods of testing and implementing Driverless AV Passenger Service at airports during the early stages of deployment.*¹¹

¹¹ See Waymo’s Opening Comments, at p. 6; *emphasis added*.

Implicit in this argument is the notion that the Commission and TCP-AV permit holders will determine whether Driverless AVs will provide commercial passenger services at airports, and that the role of airports is to simply “collaborate” with TCP-AV permit holders over the logistics of providing services. As the City noted in its Opening Comments, municipal airports have the sole authority for determining what businesses may operate on their premises.¹²

GM Cruise similarly misunderstands the authority of airports, stating “[w]e understand that coordination with the appropriate airport authority is important prior to serving the airport.”¹³ The City requests the Commission include in its final Decision an unequivocal statement that no TCP-AV may operate at a municipal airport in *any* capacity – Drivered, Driverless or otherwise – without the express authorization of the airport authority, and that no airport authority is required to authorize TCP-AV services.

D. No Fare Collection or Fare-Splitting During the Pilot Programs

As mentioned earlier in this brief, we encourage the Commission to take an incremental approach in allowing AVs to be placed into passenger service. This includes not allowing fare collection during the pilot program. The focus of these pilot programs should be public safety rather than profit or testing business models. Both Waymo and GM Cruise argue that DMV regulations already allow for commercial use of AVs.¹⁴ However, this statement is incorrect. The DMV’s regulations provide that:

“Deployment” means the operation of an autonomous vehicle on public roads by members of the public who are not employees, contractors, or designees of a manufacturer or for purposes of sale, lease, *providing transportation services for a fee*, or otherwise making commercially available outside of the testing program.” (*emphasis added*.)¹⁵

¹² See City’s Opening Comments at p. 8-10.

¹³ See GM Cruise Opening Comments at p. 18.

¹⁴ See GM Cruise’s Opening Comments p. 5-7 and Waymo’s Opening Comments p. 2, 7.

¹⁵ Cal. Code of Regulations, Title 13, §228.02(c).

But it is the Commission – not the DMV – that regulates Charter-Party Carriers in California and issues permits and certificates authorizing charter-party carriers to conduct passenger transportation services.¹⁶ Simply because the DMV may permit AV manufacturers to sell, lease or use these vehicles for providing passenger services does not mean that the Commission lacks authority to regulate how, when, and under what conditions these vehicles may be put into commercial passenger service in California. In order to ensure public safety, the City agrees with the Commission that monetary compensation should be prohibited for the duration of the pilot programs. Similarly, to ensure public safety, the City agrees that fare-splitting should not be permitted during the pilot programs. The Commission’s proposed pilot programs will provide valuable information to understand if this requirement should be revisited as part of a permanent AV Passenger Service Permit program.

E. Public Disclosure of Pilot Program Data

The PD requires TCP-AV permittees to report eight sets of data on a monthly basis, which will be posted on the Commission’s website. Given the Commission’s stated goal of establishing an AV Passenger Service Permit in Q1 2019, monthly reporting of data is critical to inform the proposed CPUC-DMV workshop and the conditions of the eventual permit. The collected data must be publicly available to cities, members of the public and other stakeholders to properly shape any permanent AV Passenger Service Permit program so that the public interest is protected. All of the data that is required to be publicly disclosed is aggregate trip data in which no personal information regarding passengers is provided. Lyft, GM Cruise and Waymo all argue that disclosure of this data somehow violates the privacy rights of individual passengers or would provide an advantage to their competitors. This is a red herring – and an incorrect assertion of current law. In a recent Florida case, a Court of Appeal held that aggregate customer travel data provided by Uber to Broward County was *not* a trade secret.¹⁷ Further, disclosure of this information did not violate any individual passenger’s privacy rights. In response to a public records request submitted to Broward County, the court held that the county was permitted to withhold some Uber customer pick up data, such as the specific time

¹⁶ California Public Utilities Code §§5351, et al.

¹⁷ *Raiser-DC, LLC v. B&L Serv.*, 43 Fla.L.Weekly D145 (Dist. Ct. App. 2018).

of Uber customer pickups, from public disclosure. However, the total number of Uber pickups at the airport, and total customer fees paid by Uber for those pickups, was *not* a trade secret since disclosure of this information would not provide any competitive advantage to Uber's competitor. The Florida statute defining "trade secret" at issue in the case is very similar to the definition of "trade secret" in California.¹⁸

The City articulated its position regarding the need for this data in its Opening Comments. With access to this data, the City could design targeted remedies to relieve traffic congestion and ensure greater public safety. Further, the City requests the Commission to require AV permittees to report additional data as set forth in our Opening Comments.

F. Accessibility Reporting Requirement

While the City agrees with the companies' request that accessibility reporting requirements be changed from reporting requests made by disabled passengers to reporting requests for accessible vehicles instead, the City urges the Commission to adopt a regulation that requires AVs deployed for passenger service to provide universal accessibility, including wheelchair accessibility, in which case such data reporting would become unnecessary.

CONCLUSION

The City echoes its prior comment that the introduction of commercial AVs is an exciting prospect. However, reasonable regulations must be promulgated that balance encouraging new technological innovation while protecting public safety.

¹⁸ See, Florida Statutes §688.002(4) and Cal. Civil Code §3426.1(d).

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