



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

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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 PROPOSED DECISION ON
PHASE II ISSUES AND RESERVING ADDITIONAL ISSUES FOR RESOLUTION IN PHASE
III**

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I. Vehicle Inspections

A. Mileage Requirement

Citing to a November, 2014 report from the CPUC's Safety and Enforcement Division ("SED"), Uber states that "the average TNC driver spends less than 16 hours a month providing transportation services," and contends, as does Lyft, that most TNC vehicles are unlikely to be driven more than 50,000 miles per year for commercial purposes.¹ The issue is not, however, how many miles a vehicle is driven annually while providing TNC services, but how many miles in total the vehicle is driven annually. A vehicle that provides for-hire transportation services should be inspected every 50,000 miles, at a minimum, to ensure that the vehicle remains safe to operate. From a safety perspective it is irrelevant whether the 50,000 miles are traveled for commercial or for personal purposes.

Uber and Lyft also object to the requirement that vehicles be inspected every 12 months or 50,000 miles because TNCs do not have "ready access to an individual vehicle's total mileage."² But TNCs could require their drivers to report vehicle mileage as part of their initial and annual vehicle inspection reports. TNCs could then compare that mileage figure to the figure provided in the vehicle's previous annual or initial inspection report to determine whether the vehicle has traveled more than 50,000 miles during the past year and should, therefore, have been inspected at the 50,000-mile mark.

B. Qualified Vehicle Inspectors

Lyft objects to the Proposed Decision's requirement that vehicles be inspected by a BAR-licensed facility because it is "not aware of any evidence" that, among other things: 1) equipment failure is more common in Lyft vehicles than in vehicles that are not used to provide for-hire transportation; 2) accidents involving Lyft vehicles were caused by equipment failure, and 3) licensed facilities will conduct inspections that are more rigorous than the inspections that Lyft currently performs. The Commission should reject these arguments.

First, Lyft has opposed the presentation of evidence in this rulemaking proceeding. The City argued at the outset that discovery would be useful, and that the CPUC should hold evidentiary hearings.³ Lyft objected, stating that discovery was neither necessary nor appropriate, and that evidentiary hearings were unnecessary.⁴ Moreover, the City has urged, and continues to urge, the CPUC to require greater reporting from TNCs on a range of topics, including reports on drivers involved in accidents while providing TNC services. The TNCs have objected to providing such reports.⁵

¹ Raiser-CA's Opening Comments, p.2; Lyft's Opening Comments, pp. 2-3.

² Raiser-CA's Opening Comments, p.4; Lyft's Opening Comments, p. 6.

³ City's Prehearing Conference Statement filed February 23, 2013, pp. 4-5.

⁴ Lyft's Prehearing Conference Statement filed February 23, 2013, p. 3

⁵ Lyft's Reply Comments filed June 8, 2015, pp. 7-8; Raiser-CA's Reply Comments filed June 8, 2015, p. 19.

Second, the CPUC does not need “evidence” that TNC vehicles are less safe than other “personal” vehicles in order to require professional inspections. The CPUC has an affirmative duty to “promote carrier and public safety through its safety enforcement regulations.”⁶ If the CPUC determines that public safety is advanced by requiring that vehicles providing commercial services be inspected by licensed mechanics, nothing more is required. Nor does the CPUC have to wait until a fact finder determines that equipment failure was the proximate cause of a particular accident. The CPUC has already determined that TNCs are charter-party carriers, i.e., they are transporting passengers for compensation. Requiring that TNC vehicles be inspected by licensed mechanics insures a uniform standard of professional inspections. Allowing an unknown “driver partner” or “mentor” to conduct vehicle inspections does not.

Finally, it appears that inspections by BAR-certified facilities may cost as little as \$20.⁷ The financial burden of undergoing a BAR-certified inspection is therefore outweighed by the public safety protection accorded by a professional vehicle inspection. Moreover, Lyft is valued in the billions of dollars. If the cost of vehicle inspections is a hardship for its drivers, Lyft can agree to cover that cost.

Uber argues that the CPUC should allow inspections by mechanics “affiliated” with a BAR-certified facility. The term “affiliated mechanic” is unclear and unenforceable. If inspections are not performed by a licensed facility, the individual performing the inspection should be properly licensed or certified. The Proposed Decision recognizes this fact and proposes to address this issue in Phase III of this proceeding.⁸ The CPUC should not amend the Proposed Decision to allow inspection by mechanics “affiliated” with BAR-certified facilities, but should, instead, address this issue in Phase III.

C. Initial TNC Vehicle Inspections

Lyft argues that the Proposed Decision can be read to mean that the initial vehicle inspection need not be conducted by a BAR-certified facility. The City disagrees. Decision 13-09-045 requires “a 19-point vehicle inspection prior to allowing a vehicle to be driven as part of the TNC service, and annually thereafter”⁹ The Proposed Decision adds to that rule a requirement that vehicles driven more than 50,000 miles annually be inspected at the 50,000-mile mark, and a requirement that vehicle inspections be conducted by a BAR-certified facility. The Proposed Decision neither states nor implies that the initial inspection of a TNC vehicle is less critical to the public safety such that it need not, like

⁶ Cal. Pub. Util. Code § 5352.

⁷ See <http://www.ridesharingdriver.com/will-your-car-pass-the-uber-or-lyft-vehicle-inspection/>; <http://mcsanfrancisco.jiffylube.com/custom/746-Jiffy-Lube--Lyft-Inspection-Locations>

⁸ “In Phase III of this proceeding the Commission may consider recommendations regarding the appropriate entities to perform licensing/certification of individual mechanics that TNCs could employ to conduct the required vehicle inspections.” Proposed Decision, p. 19.

⁹ Decision 13-09-045, p. 5.

subsequent inspections, be conducted by a BAR-certified facility. Because this issue is critical to public safety, the CPUC should modify its Proposed Order to state clearly that mandatory vehicle inspections occurring before TNC service begins, as well as those required thereafter on an annual basis or every 50,000 miles, must be conducted by a BAR-certified facility.

II. TNC Reports

A. The Proposed Decision Correctly Requires TNC Collection of SRI Reports.

Lyft contends that it does not have an effective means of collecting SRI reports because requiring its drivers to submit them would violate the drivers' statutory right of confidentiality.¹⁰ The Commission should reject Lyft's argument.

Vehicle Code Section 16005 allows "any person having a proper interest" in the contents of an SRI report to receive specified information contained in that report. Vehicle Code Section 16005(b) lists some of the people and/or entities that may have a "proper interest." Section 16005(b) does not limit disclosure to those persons and entities, but simply provides examples of some of the individuals and entities that would meet the statutory standard. Moreover, the illustrative list includes "employers" of drivers involved in accidents. The question whether drivers are employees of TNCs or independent contractors is currently being litigated. But the relationship between TNC drivers and TNCs is such that TNCs, which have statutory liability for accidents occurring when TNC services are provided, are entities "having a proper interest" in the contents of SRI reports. Thus, TNCs could require that their drivers provide them with the information specified in Vehicle Code Section 16005(a).

In addition, TNCs are already obligated to report accident data to the CPUC. Item "k" of the Regulatory Requirements listed in Decision 13-09-045 provides as follows:

Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.¹¹

To ensure that they can comply with this reporting requirement, TNCs should already be requiring their drivers to provide the information regarding accidents that is specified in Decision 13-09-045. If the CPUC is concerned about the confidentiality of SRI reports and with TNCs' ability to require their drivers to provide them with such reports, the CPUC should modify its Proposed Decision to mandate that TNCs require their drivers to provide them with the information specified in "item k" of Decision

¹⁰ Lyft's Opening Comments, p.7.

¹¹ Proposed Decision, p. 32.

13-09-045 for all accidents in which they are involved while providing TNC services.

B. Reporting Requirements Regarding Driver Suspensions and Deactivations

The Proposed Decision requires TNCs to file "an annual report identifying the TNC drivers they have suspended or deactivated for any reasons relating to safety and/or consumer protection" ¹² Lyft asserts that this reporting requirement could be "subject to a wide variety of interpretations," and it requests that the CPUC require that deactivations/suspensions be reported only if they are imposed for one of the four reasons listed in the Proposed Decision.

The Proposed Decision's deactivation/suspension reporting requirement is neither vague nor unworkable. We note that Lyft fails to provide an example of a situation in which it might be unclear whether a deactivation/suspension would have to be reported. Most, if not all, TNC deactivations or suspensions are related to public safety or consumer protection. But to the extent that TNCs deactivate or suspend drives for other reasons, for example, if the TNC requires all drivers to drive for a minimum number of hours per week and a driver fails to do so, it need not report such deactivation or suspension.

Because the standard for reporting deactivations and suspensions is clear, the Proposed Decision need not list all the reasons for deactivation or suspension that are related to safety or consumer protection. But if the CPUC decides to do so, it should not limit that list to the four reasons stated in the Proposed Decision. That list, which is merely illustrative, is far too narrow. It does not include many of the legitimate rationales for deactivation or suspension related to public safety or consumer protection.

C. The CPUC Should Make TNC Reports and Filings Available to the Public.

The CPUC has a duty to regulate for-hire transportation in the state to ensure the public safety, ¹³ and the public is entitled to know whether the CPUC is performing its regulatory function adequately, and whether TNCs are complying with the CPUC's orders. The public cannot judge the quality of enforcement or compliance without access to the reports and other filings that the CPUC requires TNCs to provide about their operations. Therefore, the CPUC should post the following TNC information, required by the Proposed Decision, on its website: 1) photographs of TNC trade dress; ¹⁴ 2) TNC annual reports regarding TNC drivers suspended or deactivated for violations related to safety or consumer protection (with identifying information redacted); ¹⁵ 3) TNC driver training curricula; ¹⁶; 4) TNC certificates of insurance; ¹⁷ and 5) TNC annual reports regarding fare-splitting. ¹⁸

¹² Proposed Decision, p. 25.

¹³ Cal. Pub. Util. Code § 5352.

¹⁴ Proposed Decision, p. 55.

¹⁵ Proposed Decision, p.25.

¹⁶ Proposed Decision, p.26.

¹⁷ Proposed Decision, p.34.

¹⁸ Proposed Decision, pp. 55-56.

III. Trade Dress

Both Lyft and Rasier-CA argue that the rear facing trade dress requirement is based on the CPUC's unfounded assumption that TNC drivers do not comply with traffic laws, or are "substandard."¹⁹ The Proposed Decision evidences no such assumption. Instead, it concludes that rear-facing trade dress will provide notice to other vehicles that they are behind a vehicle providing for-hire transportation that may, therefore, stop frequently.²⁰

Lyft and Rasier-CA also argue against rear-facing trade dress because TNC drivers would have to exit their vehicles to display or remove such trade dress, while trade dress displayed on the front windshield could be removed by the driver while he or she is seated in the vehicle.²¹ This burden – the loss of a minute or so of a driver's time – is inconsequential when weighed against the benefit to the public safety that trade dress on the rear of the vehicle would provide. Lyft also states that its drivers, although they would be "instructed to retreat to a safe location" prior to removing trade dress, cannot be trusted to do so, but may, instead, "engage in unsafe behavior that could endanger the driver, passenger or other individuals."²² This concern reveals a worrisome appraisal by Lyft of its drivers' commitment to the safety of Lyft's passengers and other members of the public.

IV. Personal Vehicles

The record regarding the appropriate definition of the term "personal vehicle" is insufficient for decision making because the parties have not been accorded an opportunity to comment on the issue, and the Proposed Decision's discussion of the issue is confusing, incomplete, and does not provide a workable definition of the term. The CPUC should issue a separate ruling that poses questions and solicits the parties' comments on the question of what constitutes a personal vehicle for the purposes of Public Utilities Code Section 5431, and then address the issue in a proposed decision. The CPUC should also delete from its current Proposed Decision the discussion of the term "personal vehicle" as that discussion will only exacerbate the current confusion about the distinction between personal vehicles used to provide TNC service and vehicles used to provide other TCP service.

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Respectfully submitted,

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¹⁹ Rasier-CA's Opening Comments, p. 5; Lyft's Opening Comments, p. 9.

²⁰ Proposed Decision, pp. 37-38.

²¹ Rasier-CA's Opening Comments, p. 5; Lyft's Opening Comments, p. 10.

²² Lyft's Opening Comments, p. 10.