



BEFORE THE PUBLIC UTILITIES COMMISSION OF
STATE OF CALIFORNIA

FILED
01-28-13
04:59 PM

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

R.12-12-011

**INITIAL COMMENTS TO ORDER INSTITUTING RULEMAKING
FILED ON BEHALF
OF THE
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

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INTRODUCTION

The following comments to the Order Instituting Rulemaking issued by the California Public Utilities Commission ("CPUC") are submitted by the San Francisco Municipal Transportation Agency ("SFMTA"). California Government Code Section 53075.5 requires each city or county to protect the public health, safety and welfare by regulating taxicab service. In San Francisco, that regulatory authority is exercised by the SFMTA, which also has the exclusive responsibility for delivering public transit service and regulating the use of the City's streets for parking and traffic. The SFMTA remains the only urban transportation agency in the country that consolidates these responsibilities and coordinates five modes of urban transportation – pedestrian, bicycle, automobile, public transit and taxi. The SFMTA's Board of Directors has established, and continues to refine, a comprehensive regulatory scheme for all aspects of the taxi industry that reflects its mandate to balance and integrate competing transportation modes, needs and preferences in a manner that facilitates the ability of San Francisco's residents and visitors to move around the City.

COMMENTS

The SFMTA strongly supports technological innovations that improve access to transportation, including use of smartphone applications ("apps") to arrange for on-demand transportation by motor vehicles. We hope these innovations will increase use of public transportation and diminish reliance on single occupant trips in private automobiles. Indeed, several companies currently offer smartphone apps that enable customers to arrange pickup in San Francisco from a licensed San Francisco taxicab. We believe these applications could both lead to substantial improvements in San Francisco taxi service by linking available drivers with nearby customers, reducing fallow time for taxicabs, and reducing customer wait time, and also further the City's goals of reducing traffic congestion and greenhouse gas emissions.

However, the application of a new technology to communicate the availability of a transportation for hire service does not alter the nature of the service, or the need for oversight of this critical public service. State and local regulation of transportation for hire services plays an essential role in preserving passenger and public safety. New applications should not undermine public safety

protections. Accordingly, the SFMTA supports the CPUC's efforts to regulate such transportation to ensure its safety.

While protecting public safety is the most important public purpose served by state and local regulation of transportation for hire, this is not the only public purpose that must be considered. As discussed below, Lyft and Sidecar offer services that meet the statutory definition of state-regulated charter-party service; however, from a customer point of view, they facilitate service more like locally-regulated taxi service. To the extent that unregulated providers minimize costs by failing to comply with well-established safety regulations, these providers compete unfairly with their regulated counterparts. Because regulated transportation for hire will play a key role in meeting state and local congestion management and environmental goals, cut rate unregulated providers should not be allowed to drive them out of business.

A. Jurisdiction¹

How should the Commission's existing jurisdiction be applied to businesses like Uber, SideCar and Lyft and the drivers employed or utilized by these entities?

The scope of the CPUC's Rulemaking includes businesses like Uber that provide on-demand transportation services by connecting prospective passengers to licensed charter-party carriers via a smartphone application, in addition to businesses like Lyft and SideCar that also utilize a smartphone application, but connect prospective passengers to providers that are neither licensed charter-party carriers nor licensed taxicabs. We have focused our comments on businesses like Lyft and SideCar because we believe that, by operating without any governmental oversight whatsoever, they present the greatest risk to public safety.

State law defines a charter-party carrier as any "person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state." (Cal. Pub. Util. Code Section 5360). Drivers affiliated with businesses like Lyft and

¹ For the sake of clarity, we have organized our comments by answering questions posed by the CPUC in its Order Instituting Rulemaking. We have set forth, or paraphrased, those questions below in the sequence in which they appear in the CPUC's Order, and under the subject headings utilized in that Order.

Sidecar drive passengers to destinations of their choice in exchange for payment. These businesses collect payments from passengers, share revenue with the drivers, and manage the data flow between passengers and drivers that drivers and passengers use to connect with each other. These businesses nonetheless argue that the drivers affiliated with the companies are not providing transportation for compensation because the payments made are "voluntary," or are merely "suggested donations."

It is questionable whether these payments are, in fact, voluntary. The terms and conditions that passengers must agree to in order to use the apps provide that a "suggested" amount will be automatically deducted from the passenger's credit card if the passenger declines to make a "donation" within 24 hours of the ride. In addition, these businesses record the contribution history of passengers and share this information with affiliated drivers so they may decline to serve passengers who have historically made "donations" that fell short of the suggested amount. Finally, characterizing the payment as a donation does not change the fact that drivers for businesses like Lyft and SideCar receive monetary compensation from their passengers in exchange for providing transportation, according to an agreement between the drivers and the respective company.

Although certain transportation providers that would otherwise meet the definition of a "charter-party carrier" are exempted by statute from the CPUC's regulatory oversight, services like Lyft and SideCar do not fall within any of these exemptions. As we discuss in more detail below, they do not qualify as ridesharing services under Public Utilities Code Section 5353(h) because, among other things, some or all of the trips they provide are not incidental to another purpose of the driver.

Regulators have developed safety and service regulations to govern for-hire transportation services for very good reasons, and based on long human experience. The mere fact that for-hire transportation service can be offered through a new technology platform does not eradicate the need for basic safety and service regulations. Accordingly, these businesses should be required to meet the same regulatory requirements that other, similarly-situated for hire transportation providers must meet.

B. Safety

In order to ascertain whether the new transportation business model is having a positive, negative or non-effect on public safety, what data currently exists, and what data sets should be developed to inform the Commission’s risk assessment?

Because businesses like Lyft and SideCar are relatively new, and because they refuse to submit to any regulatory authority, neither the public, the CPUC, nor local authorities have the data necessary to determine the extent to which their operations may negatively impact the public safety. At present, the only information available to the CPUC is the unsubstantiated claims of Lyft and SideCar with respect to their safety practices.

The websites for both Lyft and SideCar contain a “safety” page that acknowledges the need to protect public safety. Lyft’s website² says that:

- All drivers and their cars are screened and continually evaluated.
- Every driver who applies to become a part of the community is screened for criminal offenses and driving incidents. Not to mention, we interview all drivers in-person.
- Only cars 2000 or newer are allowed, and each must pass our vehicle safety inspection before a driver hits the road.

Lyft’s website also makes the claim that “Lyft’s driver screening process uses criteria based on criminal background checks and DMV record checks that are more strict than any other form of transportation.”³

SideCar’s Safety page⁴ contains the following representations regarding driver and vehicle screening and insurance coverage:

- All drivers undergo a criminal background check.
- We meet every driver in person before they hit the road.
- We verify and keep on file every driver’s insurance, registration and driver’s license.
- We maintain a standard vehicle quality level and only allow vehicles in tip-top shape.

² <http://www.lyft.me/safety>.

³ <http://blog.lyft.me/>.

⁴ <http://www.side.cr/safety>.

We cannot verify the factual basis for these assertions, nor can members of the public who may wish to use the services that Lyft or SideCar provides. Therefore, members of the cannot, prior to making their transportation choices, compare the driver and vehicle standards that apply to licensed taxi or livery drivers with the standards adopted by Lyft and SideCar. Because they have entered a business in which passengers have benefitted from safety and consumer protection standards developed over decades, Lyft and Sidecar should be subject to the same regulatory standards.

Are there any aspects of these new methods of arranging for transportation services that have the potential to increase or decrease public safety?

Businesses like Lyft and SideCar that provide for-hire drivers and vehicles without any regulatory oversight have a negative effect on public safety. At the state and local level, California regulators of taxi and limousine service protect the public with the following kinds of requirements:

1. Criminal background checks of drivers;
2. Drug and alcohol testing of drivers;
3. DMV "pull notice" checks to enable suspension of drivers with new safety related moving violations;
4. Driver training for local geography, traffic safety and customer service values;
5. Vehicle age and mileage limitations;
6. Routine, professional vehicle inspections; and
7. Transparent pricing regulations.

The SFMTA's requirements for taxicabs are not identical either to the requirements imposed by the San Francisco International Airport (which is outside the SFMTA's jurisdiction) or those established by the CPUC for limousine providers and drivers. However, state law requires local governments, airports, and the CPUC to enforce their driver and vehicle safety standards in connection with taxi and limousine service in order to protect the riding public. There is no public policy reason to exempt for-hire vehicles and drivers from these regulations simply because their offer of transportation services is delivered by means of a smartphone touch screen.

To the extent that drivers and passengers in these new transportation models are allowed to publicly rate each other, should the presence, absence and detail of those reviews be part of the Commission’s risk assessment? Is public safety enhanced when drivers and passengers can rely on reviews to avoid “bad apples”?

1. Rating of Drivers

As a local regulatory body, the SFMTA receives an average of 100-200 passenger complaints per month about taxi drivers and companies. The SFMTA investigates each complaint. If the SFMTA believes a complaint is substantiated, the SFMTA may initiate a disciplinary proceeding against the appropriate permit holder, or may take other corrective measures such as vehicle re-inspections or driver counseling or retraining depending on the nature of the complaint. The SFMTA's corrective measures are influenced by the complaint, incident or discipline history of the relevant driver, vehicle, and/or company.

While a ‘star’ system enabling customers to rate drivers may appear to enhance consumer safety and choice, the value of such a system is easy to over-estimate. It appears that neither Lyft nor SideCar offer support to passengers who complain about drivers. Lyft’s Terms of Service provide as follows:

2. Complaints:

LYFT HAS NO RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OR CONDUCT OF DRIVERS OR RIDERS. LYFT HAS NO OBLIGATION TO INTERVENE IN OR BE INVOLVED IN ANY WAY IN DISPUTES THAT MAY ARISE BETWEEN DRIVERS, RIDERS, OR THIRD PARTIES. RESPONSIBILITY FOR THE DECISIONS YOU MAKE REGARDING PROVIDING OR ACCEPTING TRANSPORTATION REST SOLELY WITH YOU. (Emphasis in original.)

SideCar’s terms state:

DISPUTES WITH DRIVERS OR OTHER USERS. YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH DRIVERS OR OTHER SIDECAR USERS. WE RESERVE THE RIGHT, BUT HAVE NO OBLIGATION, TO MONITOR DISPUTES BETWEEN YOU AND OTHER USERS. SIDECAR SHALL HAVE NO LIABILITY FOR YOUR INTERACTIONS WITH OTHER USERS, OR FOR ANY USER’S ACTION OR INACTION. (Sections 1.12.6, 1.13.8, emphasis in original.)

USER DISPUTES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SIDECAR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL RESPONSIBILITY FOR MONITORING OR RESOLVING DISPUTES THAT MAY ARISE BETWEEN USERS OF THE SERVICE

(INCLUDING PASSENGERS AND DRIVERS) AS A RESULT OF THE USE OF THIS SERVICE, INCLUDING DISPUTES RELATING TO PROPERTY DAMAGE, OR PERSONAL INJURY, UP TO AND INCLUDING DEATH. SIDECAR IS A RIDE MATCHING MARKETPLACE, AND PROVIDES A FORUM TO INTRODUCE PEOPLE NEEDING TRANSPORTATION WITH THOSE ALREADY EN ROUTE TO THE SAME OR SIMILAR LOCATION, AND IS NOT A BOOKING AGENT, TRAVEL AGENT, COMMON CARRIER, TAXICAB OR LIMOUSINE SERVICE, OR OTHER PROVIDER OF TRANSPORTATION SERVICES. SIDECAR HEREBY DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR ANY DISPUTE THAT ARISES BETWEEN USERS. (Section 16, emphasis in original.)

Legitimate complaints about for-hire drivers or vehicles should lead to appropriate follow up, and complaints that are not substantiated should not unfairly tarnish the reputation of a permittee. We do not presume that popular customer ratings of restaurants obviate the need for inspections by public health departments. Nor should we presume that customer ratings of for hire drivers or vehicles substitute for a complaint and disciplinary system that provides for investigation and follow up to protect the interests of all of parties.

3. Rating of Customers

While we understand from the experience of licensed taxi drivers that some customers may be difficult, allowing drivers to rate customers poses significant concerns about potentially discriminatory and unlawful denial of service. If permittees are vulnerable to unfair allegations by customers, customers may be even more vulnerable to unfair allegations by drivers. For hire transportation should not be offered as if it were a private club. Driving a for-hire vehicle should be a public trust to be undertaken only in accordance with minimum standards for fairness and service. We urge the Commission to proceed cautiously in authorizing permittees to rate customers.

Do these new business models constitute ridesharing under California Public Utilities Code § 5353(h)?

Lyft and Sidecar, and any other companies sharing a similarly business model, do not offer "ride-sharing" excluded from charter party carrier regulations. Section 5353(h) of the Public Utilities Code, defines ridesharing as "[t]ransportation of persons between home and work locations or of persons having a common work-related trip purpose . . . , when the ridesharing is incidental to another purpose of the driver." (Emphasis added.) Section 5353(h) is intended to avoid regulation of

ridesharing when passengers and drivers with a common or proximate workplace or work-related destination seek to share transportation. According to users and marketing materials, Lyft and Sidecar solicit riders and drivers without regard to the existence of a common or proximate workplace for trips that may have no relation to a workplace. While Lyft and Sidecar drivers may offer some rides “incidental to another purpose of the driver” user reports suggest that a large share of such rides are guided only by the passenger's chosen destination and are incidental only to the driver's purpose of earning money.

The difference between ridesharing and the services offered by businesses like Lyft or SideCar are apparent when we consider that a person who accepts a ride as part of a casual carpool or work carpool does not:

1. Sign a lengthy set of terms and conditions that includes waivers of liability, waivers of the right to a jury trial or the right to participate in a class action, indemnification of third parties, assignment of intellectual property rights, consent to binding arbitration, and consent to the business's privacy policies;
2. Prove credit card information to the transportation provider; or
3. Agree to pricing terms for charges that are automatically deductible from the credit card the transportation provider has on file.

The SFMTA's information about Lyft and SideCar's policies is based solely on customer and driver reports and company marketing materials. To the extent that Lyft and Sidecar assert entitlement to regulatory exemptions, we suggest that the CPUC request the following data from the companies:

- How many trips does each driver provide per month?
- How many of these trips begin or end near the driver's home or workplace?
- How many trips does each driver take to the airport?
- How are “suggested donations” calculated?
- What is the average “donation” amount per mile?
- How can a passenger avoid paying the "suggested donation" if s/he finds service unsatisfactory?

- How many hours per day and days per week does each driver work?
- What does each driver earn per month?

With respect to passenger carrier regulation, should the CPUC recommend a broader or narrower definition of ridesharing than currently exists in the Vehicle Code?

There is no reason for the CPUC to change the definition of ridesharing under the Vehicle Code in order to accommodate for-profit transportation services delivered through smartphone applications. As discussed herein, there is nothing about the ‘new business model’ of offering for-hire transportation services through the mechanism of a smartphone application that justifies abandoning the fundamental regulatory infrastructure of the transportation for-hire industry, or that changes the level of regulatory concern when members of the public place themselves in the care and control of a private individual who they pay to carry them safely to their destination in a motor vehicle over the public right of way.

Is there a difference between a driver who transports passengers by motor vehicle for de minimis compensation and a driver who transports passengers by motor vehicle for a living? Is there a de minimis level of compensation necessary to trigger the CPUC’s jurisdiction? Should the CPUC set a minimum level of compensation that would trigger CPUC jurisdiction? If so, what should that be?

The exemption contained in Public Utilities Section 5353(h) is limited to ridesharing for work-related purposes, and is principally characterized by the fact that the ridesharing is incidental to another purpose of the driver. Based on customer and driver reports, the SFMTA assumes that data would show most Lyft and Sidecar rides are provided without regard to the driver's home or workplace and without connection to another incidental purpose of the driver. The statute states explicitly that where the "primary purpose of the transportation . . . is to make a profit," the exemption does not apply.

Is it ridesharing if the driver is not otherwise planning to take the trip requested by the passenger?

The statutory definition of ridesharing is clear with respect to the fundamental requirement that ridesharing trips must be incidental to the driver's primary purpose, and that such a purpose must be related to the driver's workplace. This definition draws a clear line between transportation that is regulated (for-hire point-to-point on-demand transportation service provided for a fee) and transportation that does not need to be regulated (unpaid transportation for mutual, work-related convenience of the driver and the passenger).

C. Insurance

If a vehicle is insured as a private vehicle, what coverage will the insurance company offer to a driver, passenger or third party injured while the vehicle is transporting passengers for hire?

While this is a critically important question, we note that insurance requirements are not equivalent to driver and vehicle safety regulations in protecting public safety. Insurance at any level does not keep criminals or unsafe drivers from offering rides to the public for a fee. Insurance at any level does not keep anyone from offering rides to the public for a fee in an unsafe vehicle. Insurance, and statutes and regulations setting standards for such insurance, can only compensate passengers and others for injuries and property damage – not help prevent them.

The SFMTA welcomes input from the insurance industry about the effectiveness of current coverage in providing compensation to passengers who may be injured when riding in vehicles operated by Lyft and Sidecar drivers. Because these businesses are very new, we are not aware of any insurance claims data that would resolve this question. However, both Lyft and SideCar seem to assume that their drivers' private automobile insurance policy may not provide coverage, or will provide inadequate coverage, in the event of an accident. Both companies have stated publicly that they do, or will, provide additional insurance above and beyond the drivers' own insurance. To our knowledge, the terms of any such policies have not been publicly released by either Lyft or SideCar, in spite of repeated requests. The CPUC should require these businesses to publicly disclose the insurance they have secured.

Is the public adequately protected if vehicles transporting passengers for hire carry only the level of insurance required for non-commercial vehicles?

The minimum personal liability insurance requirements in California are \$15,000 per person, up to \$30,000 per accident. These amounts would not be insufficient to cover more than minor injuries resulting from a motor vehicle accident. For this reason, the SFMTA requires taxi companies to provide \$1 million in automobile liability coverage, and the CPUC requires charter-party carriers to provide \$750,000 in automobile liability insurance.

Is the standard used in California Insurance Code §11580.24 (the annual cost of owning a vehicle) to determine whether a vehicle may be classified by the insurer as a commercial or livery vehicle an appropriate criterion for determining whether vehicles used in businesses like Lyft and SideCar have an effect on public safety or transportation access, and should therefore be subject to CPUC regulation?

The SFMTA believes that the insurance coverage required for every vehicle that transports passengers for compensation should be based on the purpose for which the vehicle is being used. The relationship between the cost of owning the vehicle and the compensation its owner may receive for providing transportation for hire should not be determinative. In considering this issue it is important to note that Insurance Code §11580.24 applies only to vehicles used in personal vehicle sharing programs, which facilitate the sharing of a private passenger vehicles, not the hiring of the vehicle's owner as a driver. More importantly, Section 11580.24 simply bars insurers, in some situations, from treating vehicles as commercial vehicles. It does not exempt such vehicles or their owners from regulation.

Section 11580.24 allows a vehicle to escape classification as a commercial vehicle for insurance purposes if the vehicle is involved in a vehicle sharing program that complies with the prescribed regulatory scheme. In addition to not exceeding the annual revenue cap, Section 11580.24 requires that the vehicle owner participate in a vehicle sharing program that:

