

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

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

R. 12-12-011  
(Filed December 20, 2012)

**JOINT MOTION OF THE SAN FRANCISCO CITY ATTORNEY'S OFFICE,  
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN FRANCISCO  
INTERNATIONAL AIRPORT, AND SAN FRANCISCO COUNTY TRANSPORTATION  
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December 19, 2018

## **I. INTRODUCTION**

For over a year, the San Francisco City Attorney, San Francisco Municipal Transportation Authority, San Francisco International Airport, and San Francisco County Transportation Authority (the “Joint Parties”) have advocated for the public disclosure of records submitted by the Transportation Network Companies (“TNCs”) to the Commission because those documents are regulatory documents relating to the people’s business. Both Lyft and Uber have repeatedly opposed such disclosure, and asserted that the information contained in those reports constitute trade secrets exempt from the Public Records Act. The Joint Parties submit this motion seeking official notice of facts demonstrating that both Lyft and Uber have agreed that ride information, including pick up and drop off information by zip code, submitted to the City of Seattle may be disclosed to the public. The Joint Parties also seek official notice of a recent report from the San Francisco County Transportation Authority making findings about congestion in San Francisco attributable to TNCs. These recent developments are germane to the Commission’s consideration of whether and how to disclose information to the public and local governments in Phase III.C of this rulemaking.

## **II. MOTION**

Pursuant to Commission Rules of Practice and Procedure 11.1 and 13.9, the Joint Parties submit this motion for official notice. The Commission may take official notice “of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”<sup>1</sup> California Evidence Code Section 452, in turn, provides that it is appropriate to take judicial notice of:

- (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.
- (b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.
- (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
- (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

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<sup>1</sup> Commission Rule of Practice and Procedure 13.9.

and

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.<sup>2</sup>

The Joint Parties request that the Commission take official notice of the documents attached as Exhibits A through G to this motion.

Exhibit A	<i>Lyft, Inc. v. City of Seattle</i> (2018) 190 Wash.2d 769
Exhibit B	Order Dismissing Lyft’s Complaint With Prejudice (September 6, 2018)
Exhibit C	Seattle Municipal Code Section 3.610.540
Exhibit D	City of Seattle, Department of Finance and Administrative Services, TNC Data Reporting Form
Exhibit E	San Francisco Transportation Authority Congestion Report (October 2018)
Exhibit F	Seattle Times Article: “How popular are Uber and Lyft in Seattle? Ridership numbers kept secret until recently give us a clue” (published Nov. 5, 2018) <a href="https://www.seattletimes.com/seattle-news/transportation/how-popular-are-uber-and-lyft-in-seattle-ridership-numbers-kept-secret-until-recently-give-us-a-clue/">https://www.seattletimes.com/seattle-news/transportation/how-popular-are-uber-and-lyft-in-seattle-ridership-numbers-kept-secret-until-recently-give-us-a-clue/</a>
Exhibit G	KQED News: “City Analysis: Uber, Lyft Are Biggest Contributors to Slowdown in S.F. Traffic” (published Oct. 17, 2018) <a href="https://www.kqed.org/news/11699063/city-analysis-uber-lyft-are-biggest-contributors-to-slowdown-in-s-f-traffic">https://www.kqed.org/news/11699063/city-analysis-uber-lyft-are-biggest-contributors-to-slowdown-in-s-f-traffic</a>

**A. The Commission Should Take Official Notice of the Decision By the Washington Supreme Court.**

The Commission should take official notice of the Washington Supreme Court’s decision denying Lyft and Uber’s request for an injunction barring disclosure of zip code based ride data. In that case, the Washington Supreme Court found that Lyft and Uber had not met their burden of demonstrating that disclosing the zip code based ride data was “clearly not in the public interest and in fact poses substantial and irreparable harm.”<sup>3</sup> In California, like Washington, even if a fact may constitute a trade secret, the public interest may still favor disclosure.<sup>4</sup> Given statements by Uber and others regarding the Washington lower court’s findings,<sup>5</sup> the Commission should take official notice

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<sup>2</sup> Cal. Evid. Code § 452.

<sup>3</sup> *Lyft, Inc. v. City of Seattle* (2018) 190 Wash. 2d 769, 778.

<sup>4</sup> See e.g. *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 210 (“even if the information in the spray reports does contain trade secrets, we believe that the public interest is far better served by disclosure than by the converse.”)

<sup>5</sup> See e.g. Rasier-CA LLC Opening Comments at p. 3.

of the Supreme Court’s final ruling that an injunction was improper as to the zip code based ride data. Because this opinion is decisional law of the state of Washington, it is appropriate for judicial notice.<sup>6</sup> The Commission should take official notice of Exhibit A.

**B. The Commission Should Take Official Notice of The Dismissals By Lyft and Uber.**

Following remand from the Washington Supreme Court, both Lyft and Uber dismissed their complaint seeking injunctive relief. The order dismissing the complaint with prejudice unseals the zip code based ride data, and makes it available to the public. It is evidence that the TNCs no longer believe that the ride data provided to Seattle should not be disclosed to the public. The order is a record in the docket of the King County Superior Court in Washington, and demonstrates that both companies have now conceded that the information may be produced as public records. As a record of a “court of record of ... any state of the United States,”<sup>7</sup> the dismissal is appropriate for official notice. It also reflects “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”<sup>8</sup> The Commission should take official notice of Exhibit B.

**C. The Commission Should Take Official Notice of the Seattle Reporting Requirements.**

The City of Seattle publicly posts the reporting obligations of taxis, for-hire rides, and TNCs on its website. These are the same reporting requirements that Lyft and Uber sought to frustrate by seeking an injunction preventing disclosure. Exhibit C is a copy of Seattle Municipal Code 6.310.540, and Exhibit D is a copy of the reporting form downloaded from the website of the City of Seattle’s Department of Finance and Administrative Services. Seattle Municipal Code section 6.310.540 requires TNCs to publicly report many items, including zip-code based ride data. The reporting requirements implement Seattle Municipal Code section 6.310.100 *et seq.* Thus, the reporting

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<sup>6</sup> Cal. Evid. Code § 452(a).

<sup>7</sup> Cal. Evid. Code § 452(d).

<sup>8</sup> Cal. Evid. Code § 452(h).

requirements constitute regulatory and legislative enactments “issued by or under the authority of . . . [a] public entity in the United States.”<sup>9</sup> The contents of Exhibits C and D are also “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”<sup>10</sup> Exhibits C and D are appropriate for official notice.

**D. The Commission Should Take Official Notice of the San Francisco Transportation Authority’s Report: TNCs and Congestion.**

The San Francisco County Transportation Authority recently released a report titled “TNCs and Congestion.” The San Francisco County Transportation Authority was created pursuant to the Public Utilities Code,<sup>11</sup> and is charged with developing and administering congestion management programs in San Francisco. The “TNCs and Congestion” report is posted publicly on its website, and a copy of the report is attached to this motion as Exhibit E.<sup>12</sup> It is well established that the Commission may take official notice of official acts of government agencies under Evidence Code Section 452(c). This includes documents created and published by those agencies,<sup>13</sup> and the records and files of such agencies.<sup>14</sup> Ride information, like that disclosed by Seattle, is of particular interest to the City and other local jurisdictions because TNC operations impact local jurisdictions in many ways, including changes in traffic congestion, and transit modality. As a record of a public agency, the Commission should take official notice of Exhibit E.

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<sup>9</sup> Cal. Evid. Code § 452(b).

<sup>10</sup> Cal. Evid. Code § 452(h).

<sup>11</sup> Cal. Pub. Util. Code § 131000 *et seq.* (common referred to as the “Bay Area County Traffic and Transportation Funding Act.”).

<sup>12</sup> <https://www.sfcta.org/emerging-mobility/tncs-and-congestion>

<sup>13</sup> *See Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 806 (“we may take judicial notice of the provisions of the charter of the City and County of San Francisco . . . , and of the records and proceedings of the San Francisco Civil Service Commission.”); *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 897 (judicial notice of County’s area plan and business plan was proper.”)

<sup>14</sup> *Wolfe v. State Farm Cas. & Ins. Co.* (1996) 46 Cal.App.4th 554, 567 fn 16; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 (“Evidence Code section 452, subdivision (c) permits the trial court to take judicial notice of the records and files of a state administrative board.”)

**E. The Commission Should Take Official Notice of the Existence of Documents Substantiating Historical Facts.**

Courts frequently take judicial notice of documents reflecting well-known historical facts “not subject to reasonable dispute,” and are “capable of immediate and accurate determination” through reliable sources.<sup>15</sup> This includes taking official notice of the existence of media accounts in newspapers.<sup>16</sup> Matters reported and published in the press are ideally subject to judicial notice since the existence of the media accounts substantiate historical facts, including the dispute between Lyft, Uber and the City of Seattle over the treatment of the zip code based ride data, the resolution of the lawsuit, Lyft and Uber’s willingness to allow the information to be publicly disclosed, and the TNC and Congestion report. The facts and the articles can be easily verified through the attached links or visiting the URL described in Exhibits F and G. Therefore, the Commission should take official notice of the newspaper articles attached to this motion.

**III. CONCLUSION**

For the foregoing reasons, the Commission should take official notice of the requested exhibits.

Dated: December 19, 2018

Respectfully submitted,

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By: /s/ AUSTIN M. YANG  
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On behalf of:  
THE SAN FRANCISCO CITY ATTORNEY’S OFFICE,  
SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AUTHORITY, SAN FRANCISCO INTERNATIONAL  
AIRPORT, AND SAN FRANCISCO COUNTY  
TRANSPORTATION AUTHORITY

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<sup>15</sup> Cal. Evid. Code § 452(h).

<sup>16</sup> See, e.g., *Dockray v. Phelps Dodge Corp.*, 801 F.2d 1149, 1152 (9th Cir. 1986) (“search of major newspapers produced several articles . . . of which we take judicial notice”); *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (upholding district court judicial notice of newspaper article).