



BEFORE THE PUBLIC UTILITIES COMMISSION OF

FILED

STATE OF CALIFORNIA

08-19-13

04:59 PM

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

R.12-12-011

**COMMENTS TO THE PROPOSED DECISION ADOPTING RULES AND REGULATIONS
TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE
TRANSPORTATION INDUSTRY**

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94013
(415) 701-4720

SUBJECT INDEX

TABLE OF AUTHORITIES ii

Introduction..... 1

I. THE COMMISSION SHOULD NOT DELEGATE ENFORCEMENT OF CRITICAL SAFETY REGULATIONS TO THE REGULATED ENTITIES.3

 A. The Commission should conduct a criminal background check on every proposed TNC driver using fingerprinting and criminal history databases maintained by state and federal law enforcement agencies.4

 B. The Commission should impose vehicle age and mileage limitations on TNC vehicles, and the Commission or its designee should inspect all TNC vehicles annually.5

 C. The Commission should require TNCs to protect passengers with liability insurance that is fully transparent.....5

 D. The Commission should require TNC vehicles to be readily identifiable to members of the public and regulators.....7

II. THE COMMISSION SHOULD REQUIRE THAT TNCs PROVIDE SERVICE TO ALL WITHOUT DISCRIMINATION.8

III. THE COMMISSION SHOULD REQUIRE OR ENCOURAGE TNCs TO USE GREEN VEHICLES.....9

TABLE OF AUTHORITIES

Cases

Uribe v. Howie

(1971) 19 Cal.App.3d 194, 2066

Statutes

California Public Utilities Code

Section 7101

California Evidence Code

Section 10606

California Government Code

Section 6254(k).....6

California Public Utilities Code

Section 5353(h).....1

California Public Utilities Code

Section 5371.47

California Public Utilities Code

Section 5371.4(i).....7

California Public Utilities Code

Section 5385.6(a).....7

Ordinances

San Francisco Transportation Code

Section 1108(e)(1)8

San Francisco Transportation Code

Section 1113(q).....5

San Francisco Transportation Code

Section 1113(s).....5

Introduction

Commissioner Peavey's proposed decision in Rulemaking 12-12-011 (the "Proposed Decision") reflects a careful and thorough consideration of the issues raised in the proceeding. The San Francisco Municipal Transportation Agency ("SFMTA") supports the Proposed Decision's conclusions that:

1. TNCs do not provide "ridesharing" services that are exempt from Commission jurisdiction under Section 5353(h) of the California Public Utilities Code; and
2. TNCs instead offer for hire transportation for compensation; and
3. Neither the federal Telecommunications Act of 1996 nor Section 710 of the Public Utilities Code bars the Commission from regulating TNCs as charter-party carriers.

We applaud the Proposed Decision's commitment to undertake a second phase of rulemaking to ensure that safety regulations and nondiscrimination / disability access requirements both adequately protect the customers of TCP licensees.¹

While we are encouraged by these important areas of agreement, we reject the Proposed Decision's contention that "[t]he regulations we are adopting for TNCs are similar, if not identical, to what the SFMTA requires of taxicab drivers." (P.Dec., pp. 51-52.) Rather, the regulations proposed for TNCs fall short in critical respects.

First, while the proposed regulations would require TNCs to conduct "criminal background checks" on drivers, they do not require fingerprinting to access the criminal history databases maintained by state and federal law enforcement agencies. As a result, the required background checks are highly vulnerable to error and give the public little protection from drivers who may have committed violent felonies.

¹ To ensure uniformity and/or solid rationales for any distinctions between requirements for TCP licensees and TNC permit holders, we suggest that the scope of the second phase encompass both TCPs and TNCs.

Second, while the proposed regulations would require that TNC vehicles be inspected, it does not require annual inspections, set vehicle age or mileage caps, or, with the exception of foot brakes and emergency brakes, set any standards for the performance of the 19 vehicle systems to be addressed. Since TNCs are permitted to conduct vehicle inspections themselves (using personnel with no specified training), the promise of the proposed vehicle standards, like the criminal background checks, will be rendered illusory if the Proposed Decision is not amended.

Third, the Proposed Decision relies on TNC drivers obtaining an insurance product that the insurance industry has asserted does not exist -- a personal (i.e. non-commercial) policy that nonetheless protects commercial passengers. (P.Dec., pp. 25-26, 46-47.) When combined with its approval of TNC insurance policies whose terms are kept secret from the public, the Proposed Decision *affirmatively precludes* customers from making an informed assessment of their risk of uncompensated injury while using TNC services. We can see no public interest served by the authorized secrecy.

Fourth, the Proposed Decision properly requires TNC vehicles to display consistent trade dress to enable passengers and regulators to associate a vehicle with a TNC; however, it deems magnetic or removable trade dress to be acceptable. While we understand that TNC vehicles are also used for purposes unrelated to TNC service, removable trade dress is nearly meaningless for purposes of regulatory enforcement and could facilitate insurance fraud.

Fifth, taxi drivers in San Francisco are not permitted to rate or refuse passengers. The Proposed Decision specifically empowers TNC drivers to do both, and leaves the TNCs responsible for ensuring that ratings do not result in service denial based on illegal discrimination. Finally, while the SFMTA has achieved a taxi fleet with 97% low emission vehicles, the Proposed Decision does not address TNC greenhouse gas emissions.

Taken together, these significant differences between San Francisco taxi regulations and the proposed TNC regulations create a vast safety and access enforcement gulf. We urge the Commission to amend the Proposed Decision as follows:

- 1) The Commission as regulator, or a peer agency such as the California Highway Patrol (CHP), should fingerprint and conduct criminal background checks on TNC drivers.
- 2) The Commission as regulator, or a peer agency such as the CHP, should set vehicle age and mileage caps and conduct annual vehicle inspections on all vehicles used to provide TNC service.
- 3) The Commission should eliminate the provisions authorizing TNC insurance policies to be hidden from public view.
- 4) The Commission should require TNC vehicles to display identification of their status that is not easily removable.
- 5) The Commission should prohibit TNC drivers from rating customers.
- 6) The Commission should require TNC drivers to operate clean air vehicles, or create incentives for the delivery of service in such vehicles.

Only with these changes can the proposed regulations adequately serve the public. Absent the additional key features of taxi regulation such as rate regulation, certification of equipment used to calculate fares, dispatch standards, and wheelchair accessible vans, they would still not be comparable to taxi regulations, but they would at least meet the Commission's goal and duty of protecting the public from unsafe and unlawful service.

I. THE COMMISSION SHOULD NOT DELEGATE ENFORCEMENT OF CRITICAL SAFETY REGULATIONS TO THE REGULATED ENTITIES.

The Proposed Decision recognizes that because TNCs provide for-hire transportation, they cannot continue to operate free of state or local safety oversight. (P.Dec., p.20.) But instead of holding TNCs to the standards applicable to other charter-party carriers, the Proposed Decision recommends creating a new category of charter-party carrier subject to a different set of safety requirements, which it asserts are nearly identical to SFMTA's regulations governing taxis. In fact, the proposed regulations fall quite short of San Francisco's taxi regulations in many respects. Most importantly, the *SFMTA directly regulates and enforces safety standards*

for taxi service while the Proposed Decision adopts only general standards and leaves all the details to the regulated entities themselves.

A. The Commission should conduct a criminal background check on every proposed TNC driver using fingerprinting and criminal history databases maintained by state and federal law enforcement agencies.

Taxi driver candidates in San Francisco are required to submit to a Live Scan criminal background check conducted by the California Department of Justice ("DOJ"). This process commences when an applicant's fingerprints are transmitted to the DOJ by an authorized facility. Using the fingerprints, the DOJ searches the state's criminal history database and the criminal history database maintained by the FBI. Upon receiving a DOJ report, the SFMTA determines whether the candidate has been convicted of any offense that may present a threat to the public. The Live Scan system also alerts the SFMTA to subsequent driver arrests. This enables the SFMTA to continuously refresh its information about the potential criminal conduct of both applicants and working drivers.²

The Proposed Decision requires that TNCs themselves perform a "criminal background check" on each driver, but it does not require fingerprinting. Nothing would preclude TNCs from conducting "criminal background checks" by searching public records available over the internet. This is apparently the current practice of several TNCs. (P.Dec., p. 30; Lyft Opening Comments, pp. 4-5, SideCar Workshop Statement, p. 18.)

Even assuming that publicly available databases are as complete as the criminal history databases compiled by the DOJ and the FBI, which is unlikely, an online search by name is highly vulnerable to error and would not reveal the criminal history of a driver who has changed his or her name (or its spelling) or is using an alias. To protect the public, the Commission should require that criminal background checks be initiated by fingerprinting on each prospective TNC driver. In light of the SFMTA's longstanding use of fingerprinting and Live Scan

² We applaud the Proposed Decision's requirement that TNCs participate in the California Department of Motor Vehicle ("DMV") Employer Pull Notice Program, (P.Dec., p. 25), but this program provides updated information about only vehicle-related offenses. It would provide no information, for instance, about a driver convicted of sexual assault after the initial driver screening.

background checks, a Commission decision that applies a lower standard to TNC drivers could produce the unintended consequence of populating the TNC driver pool with candidates who have been rejected as taxi driver applicants precisely because of their criminal histories.

B. The Commission should impose vehicle age and mileage limitations on TNC vehicles, and the Commission or its designee should inspect all TNC vehicles annually.

To ensure that vehicles providing for-hire transportation in the City are safe, the SFMTA bans the use as a taxi of any vehicle that is more than eight years old or has been driven more than 325,000 miles. The SFMTA also requires that all taxis be inspected by the SFMTA or its designee annually. (S.F. Transp. Code § 1113(q) and (s)). The Proposed Decision does not impose vehicle age or mileage limits on TNC vehicles, and it does not require annual inspections. Furthermore, it allows TNCs to conduct the sole initial inspection themselves rather than requiring inspection by an independent inspector. This delegation is not adequate to protect the public.

Because the condition of any motor vehicle deteriorates over time, the Commission should require that TNC vehicles, like taxis, be inspected annually.³ To ensure that the inspections are done properly, the Commission should conduct the inspections itself, or designate another qualified agency, such as the CHP or the DMV, to inspect TNC vehicles.

C. The Commission should require TNCs to protect passengers with liability insurance that is fully transparent.

The Proposed Decision would require TNCs to carry liability insurance coverage of \$1 million per-occurrence for incidents involving TNC drivers.⁴ (P.Dec., pp. 22, 47.) However, because TNCs typically neither own nor lease TNC vehicles (and have no interest in insuring the vehicles when they are not providing TNC service), TNCs apparently cannot insure the vehicles directly using standard insurance products. According to the Personal Insurance Federation of

³ In Phase 2 of the Rulemaking Proceeding, the Commission should similarly require independent annual inspections for TCPs.

⁴ In Phase 2 of the Rulemaking Proceeding, the Commission should increase the liability insurance required for TCPs.

California (“PIFC”), the model of combining a TNC driver’s personal auto coverage with excess coverage purchased by the TNC might not protect the public because the underlying insurance would provide no coverage at all for injuries resulting from a transportation for hire trip. As the PIFC explained in its January 28, 2013 comments, a survey of industry members supported the following conclusion:⁵

It appears that the *industry standard* for personal auto insurance policy contracts is to exempt from insurance coverage claims involving vehicles used for transporting passengers for a charge. Thus, in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist.

(Comments from PIFC, p. 1; emphasis added.)

The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. *This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.*

(*Id.*, at 2; emphasis added.)

These comments suggest that the \$1 million in TNC coverage required by the Proposed Decision is not standard “excess” coverage, because there may be no effective underlying coverage. Rather, the TNC coverage is a novel insurance product apparently developed specifically for TNCs. In addition, the terms of service that TNCs require their passengers to sign as a condition of service include explicit and repeated disclaimers of responsibility for injury of any kind, including bodily injury or death, resulting from the transportation services that TNCs provide. These disclaimers, and the novelty and untested nature of the TNCs’ insurance policies, raise legitimate questions about an issue of great public concern -- whether these policies will actually protect the public. Under the California Public Records Act, these policies should be accessible to the public unless the public’s interest in disclosure is outweighed by trade secrets or other interests deserving protection under California law. (See Cal. Gov’t Code § 6254(k); Cal. Evid. Code § 1060; *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 206-07.)

⁵ The PIFC’s comments note that the organization “represents six of the nation’s largest insurance companies ... which collectively write a majority of the personal lines auto insurance in California.”

The Proposed Decision provides *no* justification for non-disclosure. Absent such a showing, the Commission should require TNCs to maintain commercial automobile liability insurance on all automobiles used in TNC operations, or disclose the more novel insurance policies to the public, so that passengers and public entities can assess their risk of uncompensated injury.

D. The Commission should require TNC vehicles to be readily identifiable to members of the public and regulators.

While the Proposed Decision properly requires TNC vehicles to display consistent trade dress, the usefulness of this requirement to the public and to enforcement personnel is undermined by the authorization that such trade dress be removable. (See Proposed Decision, p. 26.) Easily removable trade dress defeats the purpose of the requirement, unless the regulations provide some other more permanent identifier that government officials, passengers and members of the public can easily identify. A TNC driver can simply remove the identifying item if he or she does not wish to be identified by law enforcement or other government officials or does not want his or her insurance carrier to discover that the vehicle is being used for commercial purposes.

Existing law supports permanent identifiers for TNC vehicles. The Proposed decision finds that TNCs are charter-party carriers “engaged in the transportation of persons for compensation” (*Id.* at 16), and “that TNCs operate on a pre-arranged basis” (*Id.* at 17). California Public Utilities Code § 5385.6(a) requires all charter-party carriers that operate limousines, as defined by Section 5371.4 of the California Public Utilities Code, to equip each limousine with a special license plate. Section 5371.4(i) defines the term “limousine” to include “any sedan or sport utility vehicle, of either standard or extended length, with a seating capacity of not more than 10 passengers including the driver, used in the transportation of passengers for hire on a prearranged basis within this state.” Taken together, these statutes and the Proposed Decision’s findings suggest TNC vehicles are required by state law to be equipped with special license plates. However, the SFMTA’s concerns would be addressed by requiring TNC vehicles to have a visible, permanent identifying decal or TNC number.

II. THE COMMISSION SHOULD REQUIRE THAT TNCs PROVIDE SERVICE TO ALL WITHOUT DISCRIMINATION.

The point-to-point, on demand transportation service offered by taxis is indispensable to individuals who cannot afford a personal vehicle, who need transportation when or where little fixed route transit service is available, or who require an alternative to fixed route public transit because of mobility impairments. San Francisco's taxi regulations therefore require taxi drivers to pick up all prospective passengers who “present themselves for transportation in a clean, coherent, safe and orderly manner and for a lawful purpose” (S.F. Transp. Code § 1108(e)(1.)) TNCs assert that they supplement taxi service in San Francisco and provide consumers a choice when they need for-hire, on-demand transportation. But the TNC business model is inherently in conflict with delivery of accessible service on a universal basis.

TNCs allow their drivers complete discretion to decide whether or not to pick up a particular passenger. That exercise of discretion may be informed by ratings the passenger previously received from other drivers, and a passenger who does not maintain a certain level of ratings from drivers may be eliminated from an e-hailing system. These practices not only give individual TNC drivers a license to decline service in response to a particular customer request, but also empower TNC drivers to trigger systematic denial of service to a customer. The prospect of denial of service based on an individual's political beliefs, age, race, ethnic origin, sexual orientation, neighborhood of residence, need for additional assistance or other protected characteristic is undeniable.

The Proposed Decision recognizes the danger posed by the TNC passenger rating systems: “[W]e also agree with Luxor Cab that discrimination against customers based on drivers' profiling may be little more than stereotyping by ethnicity, disability or economic class that will not be tolerated.” (P.Dec., p. 44.) But the Proposed Decision does not embrace the obvious tool for combating such discrimination: a rule prohibiting the rating of passengers by drivers. The Proposed Decision merely requires TNCs to ensure that such ratings are not based

on unlawful discrimination – discrimination based on race, color, national origin, religion, sex, disability, age, or sexual orientation/identity. Absent vigorous Commission oversight through audits and penalties, this rule is virtually unenforceable. Indeed, the Proposed Decision neither mandates nor suggests an enforcement mechanism, but simply delegates this issue to TNCs. We urge the Commission to prohibit drivers from rating customers in a manner that is ascertainable to other drivers, and allow only for driver ratings by passengers.

III. THE COMMISSION SHOULD REQUIRE OR ENCOURAGE TNCs TO USE GREEN VEHICLES.

The Proposed Decision acknowledges that one of the purposes of its recommendation that the Commission exercise jurisdiction over TNCs is to advance the important public policy goal of reducing greenhouse gas emissions. (P.Dec. at 21-22.) The Proposed Decision does not, however, further that goal.

Taxi regulators in San Francisco have minimized the fleet’s contribution to greenhouse gas emissions by providing incentives for the acquisition of green vehicles. San Francisco is now a national leader with a fleet consisting of almost 97% hybrid or compressed natural gas vehicles. The creation of new transportation companies offering for-hire, on-demand transportation using vehicles subject to no particular standards threatens to overwhelm these efforts to decrease greenhouse gas emissions. In recognition of the importance of this issue in San Francisco and throughout the state, the Commission should set a deadline by which TNCs must allow their drivers to operate only low emission vehicles.

Dated: August 19, 2013

Respectfully submitted,

By: /s/
Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

APPENDIX

APPENDIX

The SFMTA has no objection to the Proposed Decision's Findings of Fact or Conclusions of Law.