



BEFORE THE PUBLIC UTILITIES COMMISSION OF **FILED**

STATE OF CALIFORNIA

02-11-13

04:59 PM

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

R.12-12-011

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

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

I. Introduction

As the SFMTA stated in its Initial Comments, the use of electronic hailing applications to deliver transportation for hire services does not change the underlying nature of the services.

Electronic hailing can and is being widely used to support delivery of both state-regulated charter-party service and locally-regulated taxi service. It is also being used to support completely unregulated service. With or without electronic hailing, transportation for hire services like those offered by Uber, Lyft and Sidecar must be regulated to protect the public health and safety and to meet many other critical public policy goals served by local taxi regulation.

Services like Uber, Lyft and SideCar meet the statutory definition of charter-party service; however, as we review the record, we note that electronic hailing applications have effectively dissolved the previously coherent regulatory distinction between charter-party service and taxi service. While meeting the statutory definition of charter-party service, Uber, Lyft and Sidecar offer services that can *equally* be characterized as taxi service. The solution to this regulatory problem is not double regulation; nor can it be the solution suggested by the CPUC's recent interim settlements with Uber and Zimride -- a weakened halfway form of charter-party regulation. Existing California law provides two distinct frameworks for regulating transportation for hire. The regulatory problem triggered by electronic hailing will not be solved by "charter-party lite" or "local taxi lite" regulation. Because transportation for hire services are critical to maintaining environmentally sustainable and economically vibrant urban areas, we urge the CPUC to work closely with local taxi regulators to develop a regulatory scheme that ensures the availability of safe, reliable, affordable, environmentally-sustainable and nondiscriminatory transportation options for all segments of the market.

The transportation for hire market in California cities can sustain two classes of service -- both of which can be supported and improved by the magnificent opportunity reflected in electronic hailing innovations. As public servants, we must deliver a solution to the regulatory problem we face that does not abandon the critical goals that have historically been served by regulation of transportation for hire. Our solution must ensure that unregulated services do not drive regulated providers out of business and, in so doing, undermine our state and local goals for reducing greenhouse gas emissions

and ensuring access to safe and reliable transportation for all California residents -- including seniors and people with disabilities. While born of innovation and opportunity, this challenge is formidable. We can meet it effectively only by working together.

II. Critical public policy interests at stake in the regulation of for-hire transportation will be undermined if there is no effective regulation of services such as Lyft, Sidecar and Uber in San Francisco.

A. Taxi service is an essential component of San Francisco's transportation system.

Taxi service plays a critical role in the transportation system for every major municipality in the United States. It supplements fixed-route transit in dense urban areas with point-to-point, on-demand transportation as an alternative to personally-owned vehicles. Taxi service has been a feature of urban life since the mid-1600s, when European cities grew too large to traverse by foot, and has continued as an important part of the urban transportation network ever since. Taxi service has progressed from sedan chairs and horse-drawn hackney carriages to motor vehicles for hire. Taxi service has been regulated with respect to fares, congestion management, and driver and vehicle safety for more than 300 years. The importance of safe, reliable and affordable taxi service has only increased recently, as it offers a way to reduce personal vehicle trips, reduce parking and traffic congestion, reduce transit crowding and, by all these means, reduce greenhouse gas emissions.

Among other reasons, taxis are indispensable in the urban environment because they provide service to those who most need service: those who cannot afford personal vehicles, those who need a supplement or alternative to fixed route public transit because of mobility impairments, and those who need transportation at times of day or in areas with little or no fixed route transit service available. Fare regulations guarantee that taxi service is accessible to all at rates that balance the public's need for transportation with the provider's need for a reasonable rate of return.

B. SFMTA taxi regulations seek to ensure that taxi service is safe, reliable, environmentally sustainable, nondiscriminatory and affordable.

The California legislature has recognized the central role of taxi service to urban life by requiring municipalities to regulate taxi service. (Cal. Gov't Code § 53075.5.) Maximizing public safety is one key goal of local regulation. SFMTA taxi regulations address this goal through regular

vehicle inspections, vehicle age and mileage limitations, insurance coverage requirements, driver screening and training, driver discipline, and a system to evaluate and follow up on public complaints.

But public safety is not the only important goal for taxi regulation in San Francisco. SFMTA regulations minimize the taxi fleet's contribution to greenhouse gas emissions by requiring all newly purchased cabs to be hybrid or low emission vehicles. Local regulations have established San Francisco's taxi fleet as a national leader – with almost 100% hybrid or compressed natural gas vehicles.

In addition, San Francisco regulations prohibit discrimination against passengers. There are only very limited exceptions to the general rule that licensed taxi drivers are required to pick up any prospective passenger. And taxis are required to provide on-demand transportation to our disabled communities. San Francisco taxis provide roughly 300,000 paratransit trips per year to individuals who cannot use fixed route public transit. When compared with paratransit van service, taxi trips save the City an average (considering both ambulatory and wheelchair service) of \$26.50 per trip. Through its requirement that taxi companies provide paratransit service as a permit condition, the City will save an estimated \$5.85 million in fiscal year 2013.

Finally, like other cities, San Francisco regulates taxi fares. SFMTA regulations protect consumers by capping fares, requiring that fares be posted, and requiring that all vehicles use taximeters that have been certified in accordance with standards set by the State Department of Agriculture's Division of Measurement Standards. Just as measurement standards ensure that a pound is a pound the world around, they ensure that a mile is mile no matter the driver.

C. Electronic hailing technology does not eliminate the need for regulation, it highlights the need for better regulation to serve San Francisco's traffic, transportation, and environmental goals.

Under current California law, there are two primary distinctions between locally regulated taxis and state regulated charter-party carriers: first, charter-party carriers may operate only by "prearrangement" (Pub. Util. Code § 5360.5; CPUC Gen. Order 157-D, § 3.01), while taxis may also respond to street hails; second, charter-party carriers are prohibited from using taximeters (CPUC Gen. Order 157-D, § 3.03), while taxis are required to do so (S.F. Transp. Code § 1113(f)). Smartphone applications that allow passengers to "electronically hail" a vehicle undermine both distinctions.

Electronic hailing is essentially just a more effective form of street hailing. An electronic hail enables an intending passenger to “see” an available vehicle on their smartphone screen even when the vehicle is around the corner rather than down the block. Further, calculating a fare using a GPS-enabled device is essentially charging for transportation service using an uncertified taximeter.

In other words, electronic hailing has collapsed the distinction between limousine service and taxi service. San Francisco customers using a smartphone application may find themselves hailing an entirely unregulated vehicle providing taxi-like service. New fleets of wholly-unregulated personal vehicles deployed by smartphone increase traffic congestion during peak periods. This flood of new vehicles not only undercuts the SFMTA's efforts to regulate the flow of traffic and decrease congestion, it also frustrates our efforts to reduce vehicle emissions and resulting greenhouse gases. Unlike the City's taxi fleets, these electronically-hailed personal vehicles need not be low emission vehicles.

The competition generated by unlimited numbers of unregulated personal vehicles offered through any number of smart phone platforms poses a serious threat to the continued viability of the San Francisco taxi industry. As many parties to this rulemaking proceeding have noted, it is difficult for the taxi industry to compete with transportation services that evade all regulation. Therefore, without a cooperative state and local effort to regulate all for-hire transportation, there is a real risk that San Francisco may no longer be able to ensure the availability of taxi service – a service that provides accessible point-to-point, on-demand transportation 24 hours a day and 365 days a year, accepts any form of legal payment, has transparent and consistent pricing controls, is subject to driver and vehicle safety oversight, and offers service regardless of age, socio-economic level, geographical neighborhood or physical disability.

Unlike taxicabs, unregulated businesses expressly instruct drivers that they are free to choose whom to transport, and they provide an easy platform for drivers to rate passengers. A passenger who does not maintain a certain rating is eliminated from the system. This license to discriminate could easily lead to unavailability of these services to anyone based upon their personality, political beliefs, age, tipping practices, ethnic origin, neighborhood of residence or conversational style. This business model necessarily excludes anyone who is not willing or able to maintain a Facebook page or use a

credit card. And it is likely to exclude people who require additional time or assistance, such as the elderly and disabled.

III. To the extent they are not regulated as taxis, the CPUC should require services like Lyft and SideCar to comply, at a minimum, with all regulations applicable to other charter-party carriers.

Lyft and SideCar have argued in their Initial Comments that they are not charter-party carriers and should not be regulated as such. But these entities do not just provide a communication platform linking drivers to potential passengers. They are "engaged in the transportation of persons by motor vehicle for compensation" (Cal. Pub. Util. Code § 5360) because they engage the services of drivers, authorize the use of particular vehicles, establish the terms of service to passengers, set fares, collect revenue from passengers, and distribute revenue to drivers. Taken together, their services fall squarely within the definition of "charter-party carrier" (though, as discussed above, they appear to the customer like taxi service). The CPUC has plenary authority to regulate such carriers (Cal. Pub. Util. Code § 5381), and these services do not qualify for any of the statutory exemptions to the CPUC's regulatory jurisdiction (See Cal. Pub. Util. Code § 5353). Lyft and SideCar have presented no reasonable policy arguments for treating them differently from other charter-party carriers. As the CPUC noted in the Order Instituting Rulemaking, it has a duty to regulate charter-party carriers to protect the public safety. Allowing these businesses to operate outside the established regulatory framework is inconsistent with that duty.

A. Lyft and SideCar are not and cannot be exempt from regulation as charter-party carriers on the basis that they provide ridesharing services.

The California Public Utilities Code exempts from regulation as charter-party carriers certain drivers who offer rides to others in their vehicles. The statutory exemption for ridesharing (Pub. Util. Code § 5353(h)) focuses, as it should, on the policy goal of increasing the number of passengers in cars that would otherwise be driving to a given destination. The goal of encouraging ridesharing is to reduce overall vehicle trips (including, especially, single-occupant trips) and thereby reduce energy consumption and resultant greenhouse gas emissions. Thus, the critical element of the statutory definition of ridesharing is that rides offered to others be incidental to an intended trip by the driver. Assuming *arguendo* that the Commission has authority to expand the statutory exemption, any such

expansion that exempts from regulation trips the driver would not otherwise take, but takes solely for the purpose of making money, risks standing the purpose of the exemption on its head. “Ridesharing” trips uncoupled from a pre-existing purpose will likely become *additional* vehicle trips that contribute to congestion and energy consumption and undermine state and local goals for reducing greenhouse gas emissions. This would not serve the environmental and congestion management goals the existing statutory exemption is designed to serve. This is true regardless of the level of compensation a driver receives. Thus, the Commission should not take any action that replaces the key element of the ridesharing definition – the pre-existing purpose for the driver’s trip -- with an economic threshold of driver compensation, whether based on an individual trip or annual costs.

B. Lyft and SideCar are not and cannot be exempt from regulation as charter-party carriers on the basis that they are noncommercial enterprises.

The exemption for carrying passengers on a "noncommercial enterprise basis" is also inapplicable to the services provided by Lyft and SideCar. (See Cal. Pub. Util. Code § 5353(f).) Drivers for these companies receive payment in return for providing the ride, and the companies charge an "administrative fee" for each ride or receive a percentage of the fare. Lyft and SideCar argue that their passengers do not pay a fare, but instead make a voluntary or suggested donation. The payment can hardly be characterized as voluntary in the context of a system that rates passengers and allows drivers to refuse service to those who have failed to make satisfactory "donations." Lyft and SideCar are not operating as charities. Their purpose is to make money, and they recruit drivers by offering them an opportunity to "make extra cash," "pay your bills" or "make \$22 an hour with your car." (https://drive.side.cr/apply/view_site_home; <http://lyft.me/drivers>.) They cannot be exempt from regulation as “noncommercial.”

C. The use of a smartphone application to summon a transportation provider does not change the nature of the transportation, or the need to ensure that it is safe.

As the SFMTA argued in its Initial Comments, services like Lyft and SideCar provide transportation, for compensation, from the location of the passenger's choosing to the destination of his or her choosing. Whether that transportation is arranged through a smartphone application or an old-fashioned telephone call, the service provided, and the need for regulation to protect the public, is the

same. Lyft and SideCar, however, warn that because their technology is new, the CPUC should proceed with caution. They argue that regulation could have the effect of stifling innovation.

We see no such danger. Electronic hailing of transportation providers is clearly the wave of the future, and it has great potential to enhance federal, state and local environmental goals and the quality of life in our cities. Smartphone hailing is being embraced nationwide, and its use is not limited to "ridesharing." Smartphone applications have been a common means of hailing a taxicab in San Francisco and other cities for several years. Multiple app developers have entered into contracts with taxi cab companies and/or individual taxi drivers. In addition, the SFMTA is seeking to ensure that all licensed San Francisco cabs can be electronically hailed.

Local regulations will soon require all taxi companies to provide the SFMTA with real time vehicle location information. The SFMTA will then make the consolidated information available to application developers. Our goal is to enable passengers to summon any taxi in the City's licensed fleet from any electronic hailing application. Thus, nothing about the success and value of electronic hailing technology depends on the use of unregulated drivers and unregulated vehicles. We are confident that universally available electronic hailing will dramatically improve San Francisco taxi service – so long as unregulated or inadequately regulated transportation providers are not allowed to drive licensed taxis out of business.

IV. The interim settlements that the CPUC's Safety and Enforcement Division recently entered into with Zimride and Uber, allowing them to provide transportation through "Non TCP Holders," should not serve as a model for a permanent regulatory scheme.

In order to protect the public, the services provided by Lyft, SideCar, and any transportation provided by Uber through "non TCP Holders," should be subject, at a minimum, to the same rules that govern other charter-party carriers. The CPUC's interim settlements with Zimride, as to its Lyft platform, and with Uber, as to use of its platform by "Non TCP Holders," do not accomplish that. These settlements raise the specter of adding a distinct *third* regulatory category of motor vehicles for hire to the two that already exist – charter-party carriers and taxicabs -- and to allow this third category to operate without sufficient regulatory oversight.

A. Drug and Alcohol Testing.

The settlements require Zimride and Uber to adopt a "Zero-Tolerance Intoxicating Substances" policy. Zimride and Uber must place information on their websites and mobile applications stating that they have such a policy and must include an explanation of how riders can report drivers they "reasonably suspect" may be under the influence of alcohol or drugs during the ride. The companies must promptly suspend a driver's access to the platform upon receipt of such a complaint.

The CPUC requires much more of other charter-party carriers. All charter-party carrier applicants must provide a mandatory controlled substance and alcohol testing certification program for their drivers, and the program must comply with federal law. (See CPUC Gen. Order 157-D, Part 10.) The program must include pre-employment testing, post-accident testing, random testing, testing due to reasonable suspicion, follow-up testing, and return-to-duty testing. The charter-party carrier must provide educational materials to its drivers explaining the federal requirements, the requirements of the CPUC's General Order, and the carrier's policies and procedures designed to meet those requirements. The charter-party carrier must also advise employees of the resources available to deal with substance abuse problems.

B. Vehicle Inspection.

The settlements do not require that Lyft or Uber inspect vehicles used to transport their passengers. Other charter-party carriers must comply with the California Highway Patrol's Motor Carrier Safety regulations, which require the carrier, among other things, to inspect and maintain the vehicles to ensure that they are in safe operating order. (Cal. Code Regs., tit. 13, § 1232.) The CPUC requires charter-party carriers to maintain proper documentation of such inspections. (CPUC Gen. Order 157-D, §4.02.) We can see no reason that the use of electronic hailing systems should exempt any transportation provider from vehicle inspection requirements.

C. Insurance.

State law requires private vehicle owners to maintain the following minimum coverage amounts per accident: 1) \$15,000 for bodily injury/death of one person; 2) \$30,000 for bodily injury/death of more than one person; and 3) \$5,000 for damage to property. (Cal. Veh. Code §16056.) As many commenters have noted, this is an inadequate level of coverage in the context of

transportation for hire. The CPUC requires charter-party carriers using vehicles with a capacity of seven passengers or less to provide \$750,000 in coverage. (CPUC Gen. Order 157-D, § 1.05, CPUC Gen. Order 115-F.) While the terms of each policy may be different, insurance carriers assert that a personal automobile insurance policy would not provide coverage if the driver had an accident while driving for Lyft or SideCar. As the Personal Insurance Federation of California noted in its Initial Comments, most personal automobile insurance policies exclude coverage for claims involving transporting passengers for a fee.

The interim settlements require Zimride (for its Lyft service) and Uber (with respect to transport by Non TCP Holders) to provide the CPUC with a copy of a \$1 million excess liability insurance policy. Because it is likely that this excess liability policy will be all that is available to injured members of the public in the event of an accident, it is critical that the public be able to determine whether that excess liability coverage is really adequate. For example, if the coverage is "excess" to the driver's personal automobile coverage, but the personal policy excludes transport of passengers for compensation, will the excess liability policy still provide any coverage at all? Will "excess" carriers deny coverage when there is no underlying coverage? Are there any exclusions from coverage that might apply? Does the policy provide \$1 million in coverage per occurrence, or only total coverage of \$1 million? Would the sweeping limitations of liability, releases from liability, disclaimers, and indemnification provisions imposed by Lyft and SideCar provide the insurer with a basis for denying coverage to an injured passenger? (See <http://www.lyft.me/terms>; <http://www.side.cr/terms>.) These questions will remain unanswered. The Safety and Enforcement Division has agreed, as a term of its interim settlement with Zimride, that it will keep the excess insurance policy confidential, and will even refuse to disclose it in response to a Public Records Act request. In light of the assertions of insurance carriers, it is difficult to understand how such a settlement term respects the public interest in enabling passengers to make informed transportation choices when considering whether to use a limousine, taxi or ridesharing service.

V. Conclusion

Services that provide transportation for compensation, respond only to electronic hail, and calculate fares using GPS-enabled devices are providing taxi-like service. Consistent with

Government Code Section 53075.5's mandate that cities and counties regulate taxicabs, they should be subject to local regulation if they are not regulated as charter-party carriers. While it is important to avoid duplication in regulation, it is equally important to avoid facilitating wholly unregulated motor vehicle for hire service or fostering a third tier of regulation. State and local regulators should work together to develop a regulatory scheme that ensures the availability of safe, reliable, affordable, environmentally-sustainable and nondiscriminatory transportation options for all segments of the market.

Dated: February 11, 2013

Respectfully submitted,

By: /s/
EDWARD D. REISKIN

Director of Transportation
San Francisco Municipal Transportation Agency