

**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

**REPLY COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT
AND THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY TO
PHASE III.B SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

TRACK 3 – TNC DATA

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These Reply Comments are submitted jointly by the San Francisco Municipal Transportation Agency (“SFMTA”) and the San Francisco International Airport (“Airport” or “SFO”).

INTRODUCTION

As evidenced in the Opening Comments from numerous local government entities including SFO and SFMTA, LA DOT, and the San Francisco County Transportation Authority, local governmental agencies have a legitimate, compelling need for TNC data. SFO and SFMTA request the Commission to make the TNC travel data and reports already in the Commission’s possession, and additional TNC travel information and data (collectively “TNC data”) available to the public, or at a minimum to local governmental entities, in an anonymized and aggregate form.

Local governmental entities, including SFMTA traffic engineers and transportation planners, can analyze and use this data to design effective solutions to the secondary impacts of urban density such as traffic congestion. The public interest and research value to local governmental agencies that would receive this data and information is overwhelming. Even though San Francisco is a relatively small city, the City has the distinction of being the fourth most congested city in the world. Without this information or data, local government employees must rely on anecdotal information that does not always present an accurate depiction of the actual conditions on City streets. Intelligent, sound transportation decisions based on actual data benefits all Californians – not just San Francisco. The Commission’s decision to grant access to TNC data will advance numerous government policies including: Safety/Vision Zero and Congestion Management; Transit First; Equity; Accessibility; and Clean Air/Sustainability.

However, the TNCs and their interested supporters object to the disclosure of this information and data to local governmental agencies based on the following theories: (1) violation of individual privacy rights, (2) usurpation of the Commission’s regulatory authority, (3) similar information is already provided by Uber Movement¹, (4) disclosure of “official information” protected by the California Public Records Act, and (5) disclosure of information constituting a trade secret. Few of their objections hold merit. But in those limited instances where the Commission may have a concern,

¹ As we noted in our Opening Comments, Uber Movement does not provide any information or data regarding Uber vehicle travel times to any agency of the City and County of San Francisco.

there are steps that the Commission can take to protect specific information or data from disclosure to the public, or, for information or data provided to local governmental agencies, by requiring a non-disclosure agreement. As a result, there are no significant obstacles for the Commission to require disclosure of TNC travel data and information to local governmental agencies.

We address some of the specific objections raised by the TNCs in their Opening Comments below.

ARGUMENT

1. Privacy and Public Information Requirements

Uber and Lyft assert that personal privacy would be violated if aggregate TNC information and data is disclosed to local governmental agencies. This is not true. The anonymized and aggregated TNC data at issue rarely includes personal information. And, if any such information is implicated, there are mechanisms to redact that information or eliminate that data field from public disclosure.

The regulations promulgated by New York City's Taxi and Limousine Commission ("NYC TLC") provide an excellent counter-point to the TNCs' arguments. NYC TLC requires submission of trip record information by TNCs operating in New York City² for the purpose of improving safety, accountability and making good public policy decisions.³ The procedures TNCs must follow for electronic submission of required information are set forth in the regulations and include driver and vehicle information - but not individual passenger information.⁴

TNCs and other for-hire vehicles submit trip record information via Secure File Transfer Protocol ("SFTP"), and *only* the NYC TLC can access the uploaded data. NYC TLC and the for-hire vehicles do not execute a non-disclosure or confidentiality agreement for purposes of fulfilling these requirements.⁵ In the near future, NYC TLC intends to provide this information to New York City's

² NYC TLC regulates TNCs as "for-hire vehicles."

³ See 59B-19 in Chapter 59 of the NYC Taxi and Limousine Commission's Regulations http://www.nyc.gov/html/tlc/downloads/pdf/rule_book_current_chapter_59.pdf

⁴ See For-Hire Vehicle Trip Record Submission Procedures http://www.nyc.gov/html/tlc/html/industry/fhv_etrip_record_submission.shtml

⁵ See http://www.nyc.gov/html/tlc/html/industry/fhv_etrip_record_submission.shtml

Department of Transportation for purposes of transportation planning once the two agencies execute an agreement, including a non-disclosure agreement.

In compliance with the State of New York’s freedom of information laws and individual privacy requirements, NYC TLC also provides some of the trip record information it receives to the public via a NYC TLC Open Data portal.⁶ This public portal provides aggregate trip information on the number of vehicles and trips for each TNC on a monthly basis. Another source of information, which is available to the public six months after the actual trip occurs, includes TNC pick-up dates and times and the “neighborhood”, or taxi zone locations, where each trip originated and terminated, but *not* the actual address - or even the street - for either pick-ups or drop-offs, and the dispatching base from where the vehicle came.⁷⁸ The limitations for the information provided to the public is specifically designed to protect individual privacy rights while satisfying public records and information requirements. According to staff from NYC TLC, there have been no lawsuits filed alleging any violation of individual privacy rights with respect to either the NYC TLC’s data reporting requirements or the information provided to the public.

This example demonstrates that the Commission could adopt a similar model for California that does not implicate privacy rights. The Commission could designate that some of the data and information provided by the TNCs is not public information, and provide more aggregate general information to the public consistent with state and federal privacy laws. We do not seek disclosure of individual passenger or customer volume in anything other than in an aggregated format.

2. The Commission’s Authority to Regulate TNCs

Uber asserts that the request for TNC travel data and information is “part of a broader effort by cities and counties to usurp the Commission’s regulatory authority and responsibilities.”⁹ This argument is not accurate. SFO and SFMTA recognize the CPUC’s jurisdiction over TNCs. But, to fulfill its own responsibilities, San Francisco has a legitimate need for the TNC data. San Francisco is

⁶ See http://www.nyc.gov/html/tlc/html/technology/raw_data.shtml

⁷ See http://www.nyc.gov/html/tlc/html/about/trip_record_data.shtml

⁸ See [https://data.cityofnewyork.us/data?agency=Taxi and Limousine Commission \(TLC\)](https://data.cityofnewyork.us/data?agency=Taxi+and+Limousine+Commission+(TLC))

⁹ See Rasier-CA, LLC’s (Uber) Opening Comments, page 1.

more densely populated than Los Angeles, San Diego or San Jose. Since TNC vehicles have been added to the mix of transportation options, it has been difficult to obtain information to fully understand how and if TNCs have contributed to an increase in traffic congestion, how they affect public transportation, and numerous other important questions noted in the Opening Comments.¹⁰ City transportation planners need TNC trip data to perform their duties in order to plan transportation infrastructure, manage congestion, and manage operations of City streets. While the Commission has overall regulatory authority regarding TNCs, TNC vehicles are still required to comply with state and local traffic and parking laws with respect to such issues as: double parking, running red lights, parking in red zones, illegal U-turns, drunk driving, speeding, and illegal business practices. Notwithstanding the Commission’s regulatory authority, local governmental entities need – and must – continue to fulfill their duties to manage and plan the transportation system, and enforce applicable state and local laws with respect to *all* vehicles operating on California roadways including TNCs.

3. Uber Movement

Uber states that it created an online platform called Uber Movement that provides graphic visualization of TNC data.¹¹ Uber also acknowledges that this platform is still under development but provides no information regarding when local California governmental agencies will have access to this information. Even if San Francisco or other California cities are ever provided access to this platform, the Commission – and not a regulated industry – should determine what TNC travel data and information should be provided to local governmental agencies and the public.

4. “Official Information” Exemption under the California Public Records Act

The Commission requires TNCs to provide annual reports on the following topics: (1) the number and percentage of customers who request accessible vehicles and how often the TNC was able to comply with those requests; (2) the number of rides requested and accepted by TNC drivers within each zip code and the number requested but not accepted by zip code and, where rides were accepted, where the ride started and ended by zip code and fare; (3) the number of drivers suspended for a violation or as a result of zero tolerance complaints and the outcome of investigations regarding those

¹⁰ See U.C. Berkeley Transportation Sustainability Research Center’s Letter Brief

¹¹ See Rasier-CA, LLC’s (Uber) Opening Comments, pages 1-2

complains; (4) each accident involving a TNC with date, time, location and amount paid out and by whom, if any; (5) the mean number of hours and miles driven by each driver; and (6) the number of drivers who have completed driver training.¹²

Lyft argues that all of the information should be kept confidential as “official information.” San Francisco respectfully questions this position. There is a clear and irrefutable public interest in disclosure of most, if not all, of this information to local governmental entities.¹³ Both the California Public Records Act and the public interest are served by disclosing these reports, particularly since no proprietary data or private information regarding drivers or passengers is sought. The fact that disclosure of this information may paint TNCs in an unfavorable light is not a sufficient legal justification for withholding this information. The City should have information that demonstrates whether TNCs are providing accessible vehicles for persons with wheelchairs, whether TNC vehicles have been involved in serious accidents, or whether TNC drivers have been suspended for driving under the influence.

5. Trade Secret

Uber and Lyft raise numerous arguments alleging that the vast majority of the TNC data should be protected as “trade secret.”¹⁴ But, they have not demonstrated that the sharing of aggregate, anonymous TNC data would impact their business models. Moreover, even if TNC data is arguably a trade secret, the California Public Records Act requires the Commission to undertake a balancing between the interests of the entity claiming the trade secret and the public interest in disclosure.¹⁵ There is a strong public policy argument in favor of disclosure and a finding that the public interest favors non-disclosure is seldom made. In San Francisco, the TNC industry appears to be quite successful and it is hard to imagine that Uber and Lyft do not already understand their competitors’ relative market strengths. And, for the all of the reasons cited in the Opening Comments and above,

¹² See Decision 13-09-45

¹³ See San Francisco City Attorney’s Office Opening Comments, page 1

¹⁴ See Lyft’s and Raiser-CA LLC’s (Uber) Opening Comments

¹⁵ See California Government Code section 6254(k) (courts apply a balancing test between the public policy in favor of disclosure and the confidentiality of the information designated a trade secret by a company)

there is in overwhelming public interest in the disclosure of the TNC data. Even if the Commission reverses its earlier determination and finds that some of the TNC data is protected as a trade secret and the Commission weighs the interests of the TNCs more heavily than the public interest in disclosure, any trade secret concern could be easily addressed by providing the information to interested local governmental entities under a non-disclosure agreement as provided by state law.¹⁶ Sharing the TNC data with interested local governments will further these entities' responsibilities while complementing – not usurping - the Commission's oversight jurisdiction over the TNCs.

The TNCs also raise several subsidiary arguments in this vein that the Commission should reject. First, the TNCs imply that their market position is still tenuous. As multi-billion dollar companies, the Commission should treat these assertions with skepticism. For example, Lyft *tripled* the number of completed TNC rides from 2015 to 2016 – reaching a total of 162.6 million rides in the United States alone.¹⁷ Further, since local governmental entities are not one of the two competitors in the TNC marketplace, there is no risk that sharing the aggregated data with these government entities will reveal any trade secret to a TNC competitor. For Lyft or Uber to assert otherwise is simply not true.

Second, the TNCs imply that the position of the local government entities is contrary to innovation and competition. We disagree. The TNCs claim their innovation leads to public benefits such as reduced vehicle trips, air pollution, and congestion. SFO, SFMTA and other local government entities strongly support innovation that advances these public interests. Yet, we must be able to demonstrate with data that such innovation is, *in fact*, in the public interest. If the TNCs are confident that their business models advance these goals, they should allow those claims to be verified.

¹⁶ See California Government Code section 6254.5(e) (disclosures made to any governmental agency that agrees to treat the disclosed material as confidential are exempt. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law)

¹⁷ See <https://www.forbes.com/sites/briansolomon/2017/01/05/lyft-rides-tripled-last-year-but-remains-far-behind-uber/#2edad573199e>

CONCLUSION

For the foregoing reasons, we urge the Commission to disclose the TNC data to the public, or in the alternative, to disclose data to the public that is not protected as private or trade secret, and provide any protected information to interested local governmental entities under a non-disclosure agreement.

Dated: July 31, 2017

Respectfully submitted,

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