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.11-11-012

COMMENTS OF SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY REGARDING THE PROPOSED DECISION TO PHASE III.B

TRACK 1 – BACKGROUND CHECK REQUIREMENTS

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rules"), the San Francisco Municipal Transportation Agency ("SFMTA") respectfully submits these comments regarding the October 4, 2017, Proposed Decision of Commissioner Randolph ("Proposed Decision").

There are two factual misstatements in the Proposed Decision which the SFMTA requests be corrected. First, the Commission concludes that there is no "demonstratively greater level of safety [that] would be added over and above the current background-check protocols."[1] We disagree and cite the evidence presented in our previously filed comments as the basis for determining that this is an erroneous statement. Second, the Department of Motor Vehicle's ("DMV") Employer Pull Notice Program is listed under the background check process used by Uber and Lyft.[2] This is also a factual error since the DMV's Pull Notice Program is *not* used for driver background checks conducted prior to employment but rather to verify that an existing driver remains qualified to continue to drive.

II. DISCUSSION

A. GREATER LEVEL OF SAFETY FOR MEMBERS OF THE PUBLIC PROVIDED BY FINGERPRINT-BASED CRIMINAL BACKGROUND CHECKS.

The Commission's Proposed Decision concludes that "we do not see that a demonstratively greater level of safety would be added over and above the current background-check protocols"[3] if fingerprint background checks were required. The Commission should correct this misstatement given the overwhelming evidence submitted as part of the rulemaking process to demonstrate that fingerprint background check provide far better criminal background screening than commercially-based background checks.[4] For example, when the California Department of Justice ("CA DOJ") database does not contain disposition information, CA DOJ is required to query the arresting agency, the prosecuting agency, the court and local probation agency, or any other criminal justice agency that

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[1] *See* Proposed Decision p. 23.

[2] *See* Proposed Decision p. 10.

[3] Proposed Decision p. 23.

[4] *See* Opening Comments of SFO/SFMTA; Reply Comments of SFO/SFMTA.

might possess the missing information. After such efforts are exhausted and the CA DOJ still cannot obtain the corresponding disposition information for an arrest, the disposition information is deemed unavailable and the CA DOJ "shall suppress that arrest information and provide the authorized agency with a response that no criminal history exists."[5] If no fingerprints match an individual with a criminal history, the process typically takes 48-72 hours to complete.[6] Uber's commercial background check company, Checkr, in contrast, runs the applicant's name, address, and Social Security number against the National Sex Offender public website and other databases. Neither Uber nor Checkr can assert that they obtain the complete criminal history information for *any* applicant, particularly in instances when the applicant uses an alias, false name, or illegally obtained valid Social Security number because private companies cannot access either the CA DOJ or the FBI criminal database.[7] Finally, as the repository for statewide criminal records, the CA DOJ receives *all* arrest and disposition information from sheriffs, police and probation departments, district attorneys and courts, and maintains its own fingerprint database.[8] The TNCs' commercial background companies cannot make this claim since neither Checkr nor Sterling Talent Solutions are authorized by state law to either access the CA DOJ database or the FBI's criminal database for records regarding their driver applicants. An example of Uber's failure to identify potential TNC drivers who had serious criminal histories but who, nevertheless, passed Uber's background check was brought to light as a result of an unfair business practices lawsuit filed by the District Attorneys of Los Angeles and San Francisco.[9]

B.   DMV'S EMPLOYER PULL NOTICE PROGRAM.

The Commission states that Uber and Lyft's "*background check companies* utilize application data to search for additional records associated with the driver-applicant. …(c) Department of Motor Vehicle's (DMV's) Employer Pull Notice Program."[10] This factual misstatement should also be

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[5] *See* Opening Comments of SFO/SFMTA, p. 2-3.

[6] *See* https://oag.ca.gov/fingerprints.

[7] *See* Opening Comments of SFO/SFMTA, p. 4.

[8] *See* Opening Comments of SFO/SFMTA, p. 5.

[9] *See* Reply Comments of SFO/SFMTA, p. 1-5; Appendix A to SFO/SFMTA's Opening Comments.

[10] *See* Proposed Decision p. 10.

corrected. DMV's Employer Pull Notice Program is not designed to provide criminal background checks for TNC driver applicants. Rather, the program is used to obtain the driving records of current TNC drivers on a regular basis in order to ensure that these drivers are still eligible to drive. As a result, this is factual misstatement that should be corrected.

III. CONCLUSION

We urge the Commission to correct the factual record for this proceeding prior to issuing any final decision.

Dated: October 25, 2017   Respectfully submitted,

By:_____/s/_____
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