

**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
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
ON THE CONCEPT OF PERSONAL VEHICLES**

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INTRODUCTION

In September 2013, the Commission drew a bright line in its decision to recognize and regulate a new type of charter-party carrier:

The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose. To that end, a TNC is not permitted to itself own vehicles used in its operation or own fleets of vehicle.¹

It appears that line is being erased. Lyft and Rasier-CA have entered into business relationships with major car rental companies and automobile manufacturers, the objective of which is to furnish vehicles to TNC drivers for the commercial purpose of providing TNC services. Through these arrangements, Lyft and Rasier-CA control huge fleets by proxy. Yet TNCs are not held to the same standards as other TCPs.

For example, TCP vehicles with a seating capacity of 15 or less are considered “commercial vehicles” subject to “safety sensitive functions” as defined in 49 CFR 382.107, and drivers must undergo pre-employment drug and alcohol testing, post-accident testing, random testing, reasonable suspicion testing and return-to-work testing.² TNC drivers do not. TCP drivers must either be employees of the TCP holder, or themselves hold a TCP permit.³ But TNCs have no such requirement. And TCPs are required to carry \$750,000 of public liability insurance with no “on” and “off” periods, while TNCs have no obligation to cover a vehicle if the driver’s app is off.⁴

¹ D 13-09-045

² General Order 157-D, Pt.10.

³ *Id.*, Pt. 5.

⁴ Decision 14-11-043.

In support of finding that short-term rentals fit within the category of “personal vehicles,” Lyft and Rasier-CA argue that short-term rentals have strong “socio-economic benefits” because they allow disadvantaged drivers with no vehicle and poor credit history to get into the TNC business.⁵ But after expenses, some do not even make minimum wage.⁶

While the Assigned Commissioner’s Ruling did not seek briefing on this point, to the extent the Commission considers the “economic benefit” that short-term rentals can provide to disadvantaged drivers, it should require data to support these claims.

COMMENTS

Setting aside the eroded distinction between TCP limousine services and TNC services, and without reference to public policy concerns that arise from a two-tiered regulatory system, if rented or leased vehicles placed into TNC service are current on the 19-point safety inspection requirement, the vehicle is insured for all periods, including the periods during which TNC coverage is not required, and the driver is qualified to drive for a TNC, there do not appear to be significant safety concerns presented by allowing TNC drivers to drive rented or leased vehicles.

But while Lyft and Rasier-CA argue there is no need for further refinement of Commission regulations to ensure that this is the case, we disagree. The Commission should require that: (1) the drivers of all vehicles used in TNC services, irrespective of how they are procured, keep a current vehicle inspection certification in the vehicle at all times, (2) all vehicle inspection certifications must be produced for inspection by any enforcement personnel from the California Public Utilities Commission, any law

⁵ Lyft’s Opening Comments, 4-5; Rasier-CA’s Opening Comments, p. 4.

⁶ <http://uberdriverdiaries.com/how-much-do-uber-drivers-really-make/>

enforcement officer and any airport enforcement personnel upon request, and (3) TNCs must confirm that every vehicle subject to the 19-point safety inspection complies with the California financial responsibility laws even when the vehicle is not used for TNC services.

A. The Commission Should Close Inspection and Insurance Verification Loopholes

At the outset we note – as do Lyft and Rasier-CA – that Assembly Bill 2793 appears to be on a track for passage in the coming weeks. The June 30, 2016 amendments to the proposed bill allow TNC drivers to rent vehicles for TNC services as long as the *maximum* rental period does not exceed 30 days. Because the current version of the bill does not set a minimum rental period, the Commission should set the minimum period based on its assessment of how long it takes TNCs to ensure that: 1) the vehicle has passed inspection before it is put into service; 2) the driver has provided the requisite insurance with respect to the vehicle before it is put into service; and 3) TNCs’ records reflect the fact that a driver is operating a vehicle other than the vehicle previously associated with that driver.

Regarding vehicle inspections, Lyft states that its “process for updating the required records currently takes less than one hour, regardless of the time period that the vehicle is in use,” and that it is “...technologically feasible to update vehicle records several times during the course of the day” where a vehicle is driven by more than one driver in a 24-hour period.⁷ Rasier-CA states that “... verifying the activation and vehicle inspection form takes no more than a few hours.”⁸

⁷ Lyft’s Opening Comments, p. 12-13.

⁸ Rasier-CA’s Opening Comments, p. 10.

Regarding insurance, Rasier-CA explains that its “... existing processes ensure that the vehicles available through its strategic partnerships with nationally-recognized rental companies” meet insurance requirements, that “ ...[p]roof of insurance for these vehicles are kept on Rasier-CA’s system and uploaded to the driver-partner’s account ...,” that drivers do not receive trip requests until Rasier-CA has verified compliance with insurance and vehicle inspection requirements,⁹ and that it “does not onboard onto its platform any vehicle that does not meet state law by demonstrating compliance” with the financial responsibility requirements of California Vehicle Code Section 16020.¹⁰

Lyft’s discussion of compliance with Vehicle Code Section 16020 is less clear. It states that “the individual driver should be responsible for maintaining insurance that complies with the mandatory California statutory requirements while the app is off ...,” which drivers can do by way of a “contractual relationship with the entity providing the short-term rental or lease ...”¹¹ In peer-to-peer transactions, Lyft asserts that “the TNC would verify compliance as it would for all other vehicles at onboarding.”¹² But in the next section of its brief, Lyft states that “the rental company would provide the ‘period zero’ insurance ...”¹³

TNCs are already required under Public Utilities Code Sections 5433 and 5434 and Decision 14-11-043 (modifying D. 13-09-045) to provide TNC insurance coverage at all times except for when the driver operates a vehicle with his/her app turned off.

California Vehicle Code Section 16020(a) requires that all drivers and all owners of a

⁹ Rasier-CA’s Opening Comments, p.7-8.

¹⁰ Rasier-CA’s Opening Comments, p.9.

¹¹ Lyft’s Opening Comments, p.10.

¹² Lyft’s Opening Comments, p. 11.

¹³ *Id.*

motor vehicle have the ability to establish financial responsibility, and Section 16054.2 establishes the minimum amount of insurance required. But no statute or Commission Decision requires TNCs to affirmatively warrant that vehicles used to provide TNC services comply with California Vehicles Code financial responsibility requirements when they are not engaged in TNC services.

Specifically, the Decision 13-09-045 requires that TNC drivers “... provide proof of both their personal insurance and the commercial insurance in the case of an accident;” but does not require TNCs to ensure that their drivers actually purchase personal insurance.¹⁴ Public Utilities Code Sections 5433 and 5434 and D.14-11-043 (modifying D. 13-09-045), which require TNCs to provide insurance coverage, do not impose any requirements on TNCs with respect to the period during which the app is turned off. Finally, the Phase II Decision, D 16-04-041, provides that “... each TNC must ensure that the personal vehicle used by their drivers complies with all *applicable regulations* before placing the vehicle into service, including, but not limited to meeting insurance requirements...”¹⁵ California’s financial responsibility requirements are set out in the Vehicle Code, not in Commission regulations.

To close this loophole, regardless of how a TNC driver procures a vehicle, TNCs must confirm that every vehicle used to provide services on its platforms meets California Vehicle Code financial responsibility requirements. While Lyft and Rasier-CA may currently opt to do this because it is a good business practice, no statute or regulation requires them to do so.

¹⁴ D. 13-09-045, p. 26.

¹⁵ D. 16-04-041, p.57-58.

B. Proposed Additional Regulations

SFMTA and SFO propose the following additional regulations to ensure that all vehicles used in TNC service comply with Commission regulations and California law:

1. Current certification of the 19-point vehicle safety inspection shall be maintained in every vehicle used for TNC services regardless of whether the vehicle is procured by the TNC driver through a short-term rental, a lease, or any other method. The inspection must be performed and certified by a facility licensed by the California Bureau of Automotive Repair. The inspection certification shall include the date of inspection, license plate and vehicle identification number, make and model of the vehicle, and vehicle mileage on the date of inspection.
2. Every TNC driver shall make the vehicle inspection certification available for inspection by any enforcement personnel from the California Public Utilities Commission, any law enforcement officer and any airport enforcement personnel upon request.
3. Regardless of whether a vehicle used for TNC services procured by the TNC driver through a short term rental, lease, or any other method, every TNC must maintain current evidence of insurance for each vehicle demonstrating that the vehicle is covered by at least the minimum amount of liability insurance required by Cal. Vehicle Code Section 16056(a).

CONCLUSION

With the proliferation of business relationships between TNCs and car rental agencies and manufacturers for the express purpose of providing vehicles to be used for TNC services, it seems clear that there is no meaningful difference between TCP limousine services and TNC services. TNCs now control fleets by proxy, and TNC drivers drive vehicles procured for purely commercial purposes. As TNC law continues to evolve, we urge the Commission to subject TNCs to the same safety requirements imposed on TCP limousine services. At a minimum, we urge the Commission to adopt the additional regulations recommended herein.

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Respectfully submitted,

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