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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.

Rulemaking 12-12-011
(Filed December 20, 2012)

**AMENDED PHASE III. B. SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER**

Summary

This Amended Phase III.B. Scoping Memo and Ruling adjusts the ordering of the subject tracks, clarifies the scope of issues for party comments as to the newly identified Track 3 (Transportation Network Company data), and adds a new Track 4 (Is Uber Technologies, Inc. a Transportation Network Company) of the Phase III.B. Scoping Memo and Ruling that I issued on April 7, 2017. The remaining Tracks of Phase III.B. are the same but some have been renumbered.

1. Scope of Issues

As noted in the Phase III. B. Scoping Memo and Ruling, the priority for resolving the various Phase III. B. issues may shift depending on the facts known to the Commission regarding the Transportation Network Company (TNC) operations, the need to issue decisions in conformity with the directives from the Legislature, public policy, and safety considerations. Recently, the Commission has learned of the heightened interest that governmental entities have expressed in obtaining and analyzing TNC trip data in order to gauge the TNC vehicles' environmental, traffic, and infrastructural impacts on the cities and counties in

California where these TNC vehicles operate.¹ As a result, I have designated this topic as part of the newly identified Track 3.

In addition, I have added a new Track 4 to address whether the Commission should reconsider its earlier determination in Decision (D.) 13-09-045 (Finding of Fact 25), that Uber Technologies, Inc. (Uber) is not a TNC. I have raised this issue since the Commission has more information about the extent of Uber’s involvement in the TNC operations than what was known at the time that D.13-09-045 was issued.

In light of the foregoing, the Tracks are revised as follows:

Track Numbers	Issues	Questions
1	Background check requirements that should be applicable to TNCs	<ol style="list-style-type: none"> 1. What public policy and or safety objectives would be achieved by requiring all existing and prospective TNC drivers to undergo a biometric (<i>i.e.</i> the use of a person’s physical characteristics and other traits) background check? 2. Does subjecting all TNC drivers to a biometric background check adversely affect the chances of persons of different races or ethnicities to pass the background checking process? Explain why or why not. 3. In addition to a biometric

¹ For example, on June 5, 2017, the Office of the City Attorney for the City and County of San Francisco hand delivered a Public Records Act request to the Commission’s custodian of records for, *inter alia*, Uber and Lyft trip data.

Track Numbers	Issues	Questions
		<p>background check, are there other background check protocols that the Commission should consider adopting? Explain why or why not.</p> <ol style="list-style-type: none"> 4. How would any other background check protocols described in #3 above satisfy California’s public policy and or safety objectives? 5. What background check protocol should the Commission adopt to comply with the requirements and goals of Assembly Bill 1289, codified at Pub. Util. Code §5445.2?
2	Regulatory status of Uber.	<ol style="list-style-type: none"> 1. What is Uber for purposes of determining the full extent of the Commission’s jurisdiction over Uber’s California operations and its subsidiaries? 2. Should Uber be considered a Charter-Party Carrier (TCP)? 3. Should Uber USA be considered a TCP? 4. Should any other Uber subsidiary or Uber affiliated business conducting or assisting in the conducting of transportation service be considered a TCP?

Track Numbers	Issues	Questions
3.	TNC data: (a) Should the Commission establish a website portal for TNC data; and (b) Should the Commission share TNC trip data with interested California government entities?	<ol style="list-style-type: none"> 1. What is the public and/or research value of a website, database, or other publicly accessible means to host data about transportation for hire that is under the Commission’s jurisdiction? 2. What has been the effectiveness of third-party hosted websites that provide data about Commission programs? 3. What concerns, if any, are there about the ability of a Commission-sponsored website to protect customer privacy and market sensitive data? 4. What characteristics or design specifications are needed to ensure that a Commission-sponsored website would be flexible enough to adjust to future legislative action including, but not limited to: new background check standards that are germane to the Commission’s jurisdiction over TNCs? 5. Should the Commission share TNC trip data with interested California governmental entities? 6. What factors should the Commission take into account in determining if TNC trip data should be shared with

Track Numbers	Issues	Questions
		<p>interested California governmental entities?</p> <p>7. What steps should the Commission consider implementing to protect the market sensitivity of trip data?</p>
4.	Is Uber a TNC?	<p>1.Should the Commission reconsider its determination from Decision 13-09-045 (Finding of Fact # 25) that Uber is not a TNC? Set forth all facts, arguments, law, and documents that support your answer.</p> <p>2.Does Uber exercise control over the screening and selection of its TNC drivers that operate on the Uber platform? Set forth all facts, arguments, law, and documents that support your answer.</p> <p>3. Does Rasier-CA, LLC (Rasier-CA) exercise control over the screening and selection of its TNC drivers that operate on the Uber platform? Set forth all facts, arguments, law, and documents that support your answer.</p> <p>4.Does Uber terminate the accounts of drivers who do not perform up to Uber’s standards? Set forth all facts, arguments, law, and documents that support your answer.</p> <p>5.Does Rasier-CA terminate the</p>

Track Numbers	Issues	Questions
		<p>accounts of drivers who do not perform up to Uber’s standards? Set forth all facts, arguments, law, and documents that support your answer.</p> <p>6.Does Uber deactivate the accounts of passengers for low ratings or inappropriate conduct? Set forth all facts, arguments, law and documents that support your answer.</p> <p>7.Does Rasier-CA deactivate the accounts of passengers for low ratings or inappropriate conduct? Set forth all facts, arguments, law and documents that support your answer.</p> <p>8.Does Uber investigate passenger complaints that a TNC driver operating on the Uber platform was driving while impaired? Set forth all facts, arguments, law and documents that support your answer.</p> <p>9.Does Rasier-CA investigate passenger complaints that a TNC driver operating on the Uber platform was driving while impaired? Set forth all facts, arguments, law and documents that support your answer.</p> <p>10.Provide the name and job title</p>

Track Numbers	Issues	Questions
		<p>of the person(s) most knowledgeable employed by or associated with Uber who is involved in determining the fare calculation methodology via the Uber App (i.e. Uber’s smartphone application that allows an individual to send a request to providers of transportation services for transportation service).</p> <p>11. Provide the name and job title of the person(s) most knowledgeable employed by or associated with Rasier-CA who is involved in determining the fare calculation methodology via the Uber App.</p> <p>12. Provide the most current organizational structure of Uber and Rasier-CA. For Uber and Rasier-CA:</p> <ul style="list-style-type: none"> • Specify each company’s address; • Specify the names and job descriptions of all corporate officers; • Specify the number of workers employed in California; • Specify the number of persons who work as independent contractors in California; • Specify the physical address of Uber and Rasier-CA; • Specify the number of board meetings that have been held; • Specify in what form board meeting minutes are maintained; • Specify who maintains possession

Track Numbers	Issues	Questions
		<p>of the board-meeting minutes;</p> <ul style="list-style-type: none"> • Specify the names and addresses of in-house legal counsel; and • Specify the names and addresses of outside legal counsel.
5.	Accessible vehicle requirements for TNCs.	<ol style="list-style-type: none"> 1. What is the percentage of accessible vehicles that TNCs make available? 2. Are there any opportunities for the TNCs to provide increased accessible vehicle services to TNC customers?
6.	Requirements that should be applicable to TNCs concerning the incidental transportation of minors	<ol style="list-style-type: none"> 1. Provide the Commission with any updates to your plans, submitted previously in response to the May 23, 2016 and June 6, 2016 Assigned Commissioner’s Rulings that asked for information regarding the the handling and incidental transportation of minors. Should the Commission adopt any additional requirements for regulating TNCs that handle the incidental transportation of minors? Explain why or why not.
7	Requirements that should be applicable to TNCs to ensure public safety	<ol style="list-style-type: none"> 1. Are there any additional issues that the Commission has not addressed in the prior phases of this proceeding, regarding TNC operations that impact public safety? 2. Should the Commission adopt any additional regulations to

Track Numbers	Issues	Questions
		address these issues?
8	Regulation of Autonomous Vehicles	<p>1. If a person or entity partners with, or enters into an agreement with, a TNC to supply autonomous vehicles for passenger transportation service:</p> <ul style="list-style-type: none"> • Should the person or partnering entity be required to obtain authority from the Commission to operate as a TNC, TCP, or should the Commission designate an alternate regulatory category; and • Should the TNC that is a party to the partnership or agreement be required to obtain authority from the Commission to operate as a TCP, or should the Commission designate an alternate regulatory category? <p>2. Should any interested party be permitted to file a petition to modify any of the existing Commission decisions, rules, or general orders in order for autonomous vehicles to lawfully provide passenger transportation service? If so, identify all such decisions, rules, and general orders and</p>

Track Numbers	Issues	Questions
		explain how they should be modified.

2. Schedule for Comments, to file a Petition for Modification, and for Comments on the Workshop Report

Track 1	April 30, 2017	Opening comments filed and served
Track 1	May 15, 2017	Reply comments filed and served
Track 2	May 31, 2017	Opening comments filed and served
Track 2	June 15, 2017	Reply comments filed and served
Track 3	July 15, 2017	Opening comments filed and served
Track 3	July 31, 2017	Reply comments filed and served
Track 4	August 15, 2017	Opening comments filed and served
Track 4	August 31, 2017	Reply comments filed and served
Tracks 5, 6, 7, and 8	Dates for opening and reply comments TBD	
	4 th Quarter 2017	Issue proposed decision

For Track 2, the parties shall respond to the questions above in Section 1 of this Amended Scoping Memo and Ruling. In addition, Uber shall respond to the questions in the Attachment A to this Amended Scoping Memo and Ruling. Other parties may also respond to the questions in the Attachment A to this

Amended Scoping Memo and Ruling if they have information relevant to the questions.

In addition to the above schedule, this Amended Scoping Memo and Ruling imposes the following deadline for Track 8 for the parties to file a petition for modification of any prior Commission decision issued in this proceeding to address the necessary categorizations and parameters for: (a) the entities that supply autonomous vehicles; (b) the entities who partner with other entities subject to the Commission's jurisdiction in order to provide autonomous vehicles; and (c) the existing TNCs who wish to utilize autonomous vehicles in their transportation service:

- A party seeking a modification of the Commission's prior decisions, rules, and general orders in order for autonomous vehicles to lawfully provide passenger transportation, shall file a petition for modification within 90 days from the issuance of this Scoping Memo and Ruling.
- If no party files a petition for modification by the 90-day deadline, the assigned Commissioner or ALJ may issue a ruling (including an amended Scoping memo and Ruling) proposing the appropriate classification and accompanying parameters for regulating autonomous vehicles.

Finally, following the February 17, 2017 Workshop: Criminal Background Checks for TNC Drivers, the Commission's staff stated it would issue a workshop report within 45 days of the Workshop for public comment. This deadline has been delayed and the workshop report will be issued as soon as possible. Opening Comments shall be filed and served 30 days after the workshop report has been served on the service list, and Reply Comments shall be filed and served 15 days after the filing and service of the Opening Comments.

To the extent necessary, the Assigned Commissioner or the assigned Administrative Law Judge (ALJ) may adjust or supplement the schedule for submitting opening and reply comments regarding the scoped issues, the workshop report, as well as the time period for filing petitions for modification.

Consistent with Pub. Util. Code § 1701.5(a), I intend to complete this proceeding within 18 months from the date of this Amended Scoping Memo and Ruling.

3. Categorization

In the Order Instituting Rulemaking, issued on December 20, 2012, the Commission preliminarily determined that the category of the proceeding was quasi-legislative. The Scoping Memo and Ruling from Phase I of this proceeding, issued on April 2, 2013, confirmed that categorization.

4. Need for Hearing

The Commission in the Order Instituting Rulemaking also preliminarily determined that hearings are not required.

5. *Ex Parte* Communications

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJ are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(c) and Article 8 of the Commission's Rules of Practice and Procedure.

6. Assigned Commissioner

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned ALJ.

7. Outreach Effort

Cal. Pub. Util. Code § 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

R.12-12-011 was served on city, county, and state governmental agencies interested in the Commission's regulation of the TCP industry. The service and notice of R.12-12-011 occurred prior to the enactment of Cal. Pub. Util. Code § 1711(a) and was therefore not subject to the requirements of Cal. Pub. Util. Code § 1711(a) with respect to the Preliminary Scoping Memo for this rulemaking proceeding.

8. Service of this Amended Phase III. B. Scoping Memo and Ruling

Given the importance of Phase III B. of R.12-12-011, we direct the Executive Director to serve this Amended Scoping Memo and Ruling on the following:

- All California counties, incorporated cities, and incorporated towns, to the extent practical.
- All California agencies responsible for regulating vehicles entering and exiting airports.

Such service does not confer party status in this rulemaking proceeding or result in any person or entity being added to the service list for this proceeding.

9. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

10. Discovery

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the ALJ.

Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

11. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. Schedule for Completion

It is the Commission's intent to complete this proceeding within 18 months of the date this Amended Scoping Memo and Ruling is issued. This deadline may be extended by order of the Commission pursuant to Pub. Util. Code § 1701.5(a).

IT IS RULED that:

1. The category of this proceeding continues to be quasi-legislative.
2. The scope of the issues for Phase III.B. of this proceeding is as stated in Section 1 of this Amended Scoping Memo and Ruling, and that the schedule for Phase III.B. is as set forth in Section 2 of this Amended Scoping Memo and Ruling.
3. Hearings are not necessary.

4. *Ex parte* communications are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(c) and Article 8 of the Commission's Rules of Practice and Procedure.

Dated June 12, 2017, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

Attachment A
Track 2 Questions

In its July 1, 2015 Response to Assigned Commissioner and Administrative Law Judge's Ruling, Uber Technologies, Inc. (hereinafter Uber or UTI) answered Question 3 (Explain the roles that Uber, Rasier LLC, Rasier-CA, LLC, and UberX play in facilitating the provision of prearranged transportation services using the Uber App), in part, as follows:

UTI has also granted a perpetual and non-exclusive license to Uber USA, LLC (Uber USA) to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber." Uber USA, which, in California, is primarily focused on providing the Uber Service for TCP Holders, provides riders access to the Uber rider app (Uber Rider APP), subject to Terms of Use.

These questions are a follow up to the responses Uber previously filed and served. While it is possible that Uber may be the only party with information sufficient to answer the questions, the Assigned Commissioner invites all parties to respond to the extent that they have information germane to this inquiry.

1. Does Uber USA, LLC (Uber USA) still possess a perpetual and non-exclusive license to use Uber's intellectual property, including the Uber platform and the registered trademark "Uber"? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
2. Is Uber USA still primarily focused on providing the Uber Service for TCP Holders? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
3. What legal authority permits Uber USA to provide the Uber Service for TCP Holders in California?

4. Has Uber USA filed any legal papers with the California Secretary of State, and/or any other California state agency, in order to conduct business in California? If so, identify all legal papers that have been filed with the California Secretary of State and/or any other California state agency.
5. What legal authority permits Uber to grant a perpetual and non-exclusive license to Uber USA to use Uber's intellectual property, including the Uber Platform and the registered trademark "Uber" in California?
6. Identify Uber and Uber USA's business address in California.
7. List the current officers and directors of Uber and Uber USA. For each person listed, indicate their full name, title, job function, and work address. Production of an organization chart with this information is preferred.
8. Identify the number of Uber and Uber USA employees working in California.
9. Identify Uber and Uber USA's workers compensation carriers including policy numbers, dates of coverage, and policy limits.
10. Has Uber USA held annual meetings of its directors, shareholders, or members? If so, list the dates of the meetings and the directors, shareholders, or members who were in attendance.
11. Does Uber USA maintain records or minutes of the annual meetings? If so, who at Uber USA maintains these records or minutes?
12. Has Uber USA adopted company bylaws? If so, produce a copy of Uber USA's current company bylaws.
13. Describe the steps that Uber USA takes to ensure that its officers and agents abide by Uber USA's bylaws.
14. Does Uber USA maintain accounts with any banks, savings and loans, and/or other financial institutions? If so, identify the names and addresses of the banks, savings and loans, and/or other financial institutions.
15. Does Uber maintain accounts at the same banks, savings and loans, and/or other financial institutions as Uber USA? If so, identify the names and addresses of the banks, savings and loans, and /or other financial institutions.

16. Are Uber and Uber USA joint account holders at any banks, savings and loans, and/or other financial institutions? If so, identify the names and addresses of the banks, savings and loans, and /or other financial institutions.
17. Describe how Uber USA satisfies the requirement of Pub. Util. Code § 5374 (a)(1)(A) that “it is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.”
18. Does Uber USA provide riders access to the Uber rider app (Uber Rider APP)? If so, explain how Uber USA provides riders access to the Uber Rider APP.
19. Does any other Uber subsidiary or affiliated entity provide or assist in providing riders access to the Uber Ride APP to be connected to a TCP Holder? If so, identify each subsidiary or affiliated entity and explain its role.
20. Is Uber USA a TCP? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
21. Is Uber a TCP? If so, state all facts, legal arguments, and identify all documents, that support your answer. If not, state all facts, legal arguments, and identify all documents, that support your answer.
22. Does Uber play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of General Order (GO) 157-D? If so, state all facts, legal arguments, and identify all documents, that support your answer.
23. Does Uber play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of The Charter-Party Carriers Act (Pub. Util. Code §§ 5381-5389)? If so, state all facts, legal arguments, and identify all documents, that support your answer.
24. Does Uber USA play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of The Charter-Party Carriers Act (Pub. Util. Code §§ 5381-5389)? If so, state all facts, legal arguments, and identify all documents, that support your answer.

25. Does Uber USA play any role in ensuring that TCP Holders that are provided the Uber Service comply with the requirements of GO 157-D? If so, state all facts, legal arguments, and identify all documents, that support your answer.
26. Besides granting a perpetual and non-exclusive license to Uber USA, what role, if any, does Uber play in providing the Uber Service to TCP Holders?
27. In the event a passenger, pedestrian, or driver of another vehicle claims that the TCP Holder providing the Uber Service has caused either personal injury or property damage, what role, if any, does UTI play in investigating and/or resolving these claims?
28. In the event a passenger, pedestrian, or driver of another vehicle claims that the TCP Holder providing the Uber Service has caused either personal injury or property damage, what role, if any, does Uber USA play in investigating and/or resolving these claims? If your answer is none, explain your answer (including references to any supporting facts, documents, law, rules, statutes, or orders).
29. If the insurance held by the TCP Holder providing the Uber Service is either insufficient or unavailable to pay a claim made against the TCP Holder by a passenger, pedestrian, or driver of another vehicle, will UTI pay the balance of the claim? If your answer is no, explain your answer (including references to any facts, documents, supporting law, rules, statutes, or orders).
30. If the insurance held by the TCP Holder providing the Uber Service is either insufficient or unavailable to pay a claim made against the TCP Holder by a passenger, pedestrian, or driver of another vehicle, will Uber USA pay the balance of the claim? If your answer is no, explain your answer (including references to any facts, documents, supporting law, rules, statutes, or orders).
31. Produce the most current version of the Uber USA Software License and Online Services Agreement.

(END OF ATTACHMENT A)