



Shared Rides – City and California Public Utilities Commission Perspectives

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Limos and Taxis and Ubers, Oh My!
An Overview of the Regulation of Private Ground Transportation in California

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The last five years have witnessed a veritable revolution in the ground transportation industry with the advent of the "ridesharing" services provided by Uber, Lyft and similar firms. After these operations initially clashed with state and local regulators, the California Public Utilities Commission ("CPUC" or "Commission") promptly acted to establish clear guidelines for state regulation of what the CPUC has denoted as "Transportation Network Companies" or "TNCs." This allowed these companies to expand and prosper, although some would complain that this has been to the detriment of local taxi providers. This impact upon the locally-regulated taxi industry has led to legislative proposals that put in question the role of cities in the future regulation of private ground transportation in California.¹ The purpose of this paper is to explain the historic concepts that underlie the state and local regulatory landscape and provide guidance to practitioners advising cities regarding this fast-changing area.

As is typical with entrepreneurs in the "New Economy," who often feel that long-established rules interfere with innovation, the TNC industry has been notably dismissive of many regulatory barriers. In many cases they have ignored these constraints, which has led to front page legal disputes with state and local regulators. With their livelihoods on the line, taxi companies and their drivers have aggressively sought to protect their turf by seeking regulatory action to restrict or ban ridesharing operations, often turning to the local jurisdictions that regulate them in search of assistance. Much of this controversy, particularly in California, has focused on the legislative provisions that allocate regulatory responsibility to the state and to cities and counties. Thus, to fully understand the dynamics of this situation, we must first understand that regulatory framework. And in California, with its unique history, an examination of the historic genesis of the regulation of ground transportation is particularly helpful to gaining a full understanding of the regulation of these related industries.

The History of State Regulation of Private Ground Transportation

For much of California's history, government has regulated the various forms of ground transportation, including railroads, trucks, taxis, limousines, buses and, most recently, ridesharing or "TNC" companies. The goals of these regulations have varied from ensuring public safety to providing rate regulation, but have also included elements of economic protectionism, if only to ensure an adequate supply of qualified providers of each mode. This regulation has occurred at different stages of the state's history, and has been imposed by differing levels of government: federal, state and local.

Following the Gold Rush, the efficiency and the power of the railroad quickly dominated California's economy. The ability of railroads to move people and goods quickly and economically in a vast and growing state provided great benefits to its residents. However, powerful men controlled those resources and soon wielded the power they provided for their own ends. The Big Four, Stanford, Crocker, Huntington and Hopkins, through their control of the Central and then Southern Pacific railroads, dominated the state for decades, controlling

¹ AB 650 (2016), which would have taken away the power of cities to regulate taxis, was vetoed by Governor Brown.

both elected and judicial power.² The state's citizens were eventually forced to take back their government through the exercise of citizen power, enacting reforms during the early part of the last century, including the powers of referendum and initiative. This history, and the political and regulatory structures that resulted from it, have left a lasting legacy upon the state and its transportation infrastructure.

After an 1876 law failed to establish an effective regulatory body to oversee railroads, the 1879 State Constitution, via Article XII, created a Railroad Commission, which consisted of three elected members with the power to establish rates.³ The new Railroad Commission usually rubber-stamped the rates sought by the railroads and was generally viewed as ineffective.⁴ And the first set of commissioners included two who were soon found to have been corrupted by railroad money. The Railroad Commission became more effective after legislation was adopted in 1911, establishing "the most comprehensive system of public utility regulation then in existence,"⁵ allowing the Railroad Commission to end the extortionate and discriminatory rate practices that were then rampant. Indeed, the history of the CPUC that appears on its website⁶ begins its narrative in 1911, citing the adoption of Proposition 16, which substantially revised Article XII.⁷

There have followed a series of legislative and initiative changes over the last century, including the enactment in 1946 of Proposition 17, which renamed the Railroad Commission as the California Public Utility Commission, and Proposition 12 in 1974, which repealed and reenacted all of Article XII. The CPUC is a unique entity in that it is established by the state Constitution, which confers upon it certain powers and allows for the Legislature to authorize additional ones.⁸ The Public Utilities Code establishes special appellate procedures for challenging rulings of the CPUC, including potentially a direct request to the California Supreme Court for a writ of review.⁹ It is also clear that Article XII confers power to the CPUC that

² In fact, Leland Stanford, a Southern Pacific co-founder, Senator, and Governor of California, appointed Charles Crocker's brother, Edwin, to the California Supreme Court, where Crocker served while retaining his position as General Counsel to the Southern Pacific railroad. [DeBow and Syer, *Power and Politics in California*, (9th Ed.), p. 35.]

³ W. Bean, *California, An Interpretive History*, McGraw Hill, 1973, p. 240.

⁴ *Id.* at 241.

⁵ *Id.* at 318.

⁶ http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/History/ABriefHistoryoftheCaliforniaPublicUtilitiesCommission8152014Final.pdf

⁷ http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1797&context=ca_ballot_props

⁸ Cal. Const. art. XII, §5 states: "The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain."

⁹ Public Utilities Code §1756:

(a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on

(footnote continued)

preempts the regulations of cities with regard to the industries delegated to the CPUC to regulate: "[a] city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission."¹⁰

In addition to regulating various transportation providers, the Commission now regulates private gas, water, communications, and electric utilities, as well as goods movers and other industries. Its fulfillment of those responsibilities has not been without controversy, and some recent legislative proposals have sought to reconsider its purpose and function. This paper will focus on the development of the Commission's regulation of private passenger transportation companies other than railroads and then examine the history and scope of city regulation of taxis. It will also provide suggestions to city attorneys who may be asked to address these issues in the future.

State Regulation of Private Vehicular Transportation

The CPUC's regulation of vehicular carriers began in 1917, with the passage of the Auto Stage and Truck Transportation Act. Since then, the Commission has regulated two major categories of passenger carriers, "passenger stage corporations" and "charter party carriers." Section 5353 exempts certain modes of transportation from regulation, including publicly-owned transit systems. The regulation of taxicabs is specifically excluded from the Commission's jurisdiction pursuant to Public Utilities Code §5353(g).

Passenger stage corporations (PSC) are private carriers that operate regularly scheduled routes between fixed locations for fixed fares, pursuant to a "certificate of public convenience and necessity" that must be issued by the Commission.¹¹ This type of carrier would include intercity bus operators (although interstate passenger stage operators like Greyhound are subject to federal regulation). Door-to-door shuttle services, where service begins and ends at fixed termini, are also regulated as passenger stage corporations.¹²

The other major category of private operators, "Charter Party Carriers," is addressed in PUC 5351 et seq., and is designated by the CPUC acronym of "TCP." Section 5351 states that "[t]he Commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." There are a variety of subtypes of charter party carriers or limousines, which are designated by various letters (A, B, C, P, S, Z) indicating the type of certificate that is involved.¹³ These include

rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified."

¹⁰ Cal. Const. art. XII, §8.

¹¹ Public Utilities Code §1031 et seq.

¹² PUC Fact Sheet:

http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/BasicInformationforPassengerCarriersandApplicants_Nov2014_11172014lct.pdf

¹³ These subtypes are set forth in the Public Utilities Code, §§5371 et seq.

carriers that do not operate fixed-routes, with the clear distinction that their services must be prearranged, meaning that they are prohibited from accepting unarranged "hails" from individuals on the street. In fact, PUC regulations require that TCP's have a waybill in possession showing the details of the engagement. This requirement of "prearrangement" is the primary distinction between TCPs and taxis.¹⁴

So What is an Uber or a Lyft?

Into this existing framework of state regulation came the ridesharing companies, primarily Uber and Lyft.¹⁵ The new companies made use of the networking ability of smartphones, as well as powerful software utilizing GPS technology, to create links between the drivers of private vehicles and passengers needing rides. The technology enabled passengers to be linked with a specific driver, whose location could be seen on an on-screen map and whose picture and vehicle could be shown in the phone app. It is reported that this industry was boosted by the needs of late-night bar patrons for a sober ride home, but soon the services became popular with many people, primarily young people in the technology industry, who lived in urban environments and didn't own or didn't want to use their own cars. In significant ways, this new "ridesharing" industry competed directly with taxicabs, who were often slow and unreliable in responding to telephone calls and were not always easily "hailed" from the curb. Payment was easy through a pre-entered credit card, eliminating the need for cash or time-consuming card processing at the end of the ride. One study found that TNC wait times were much shorter than those for taxis called via telephone.¹⁶

The appearance of these disruptive new entrants into the transportation business was not readily accepted by the taxi industry nor by some local regulators. In many locations, the operations were viewed as being unlicensed taxi operators, akin to illegal "gypsy" cabs or other types of marginal or illegal enterprises. Egged on by taxi operators, many cities, including Portland, Oregon and Austin, Texas, have resisted the "Uber invasion."¹⁷ Yet, while there were some initial bumps in the road to their market entry into California, the prompt action of the CPUC to initiate a rulemaking process, which confirmed that these firms were subject to the Commission's regulation as charter party carriers, greatly smoothed their entrance into the California market. This exercise of jurisdiction by the Commission confirmed that local taxi regulations did not apply to TNCs. But the CPUC's actions have not always been met with approval by the taxi industry, which has seen a significant drop-off in its business.

¹⁴ Municipal Law Handbook §9.34. Cities are authorized to collect business license fees from TCPs, to regulate TCPs that serve municipally-owned airports and to inspect TCP waybills. Id. at §9.34, Code §5371.4. See also Borger and Moon, *Ride Sharing in the New Economy*, Western City Magazine, June, 2015 ("Borger and Moon").

¹⁵ Another early firm, Sidecar, is no longer in business.

¹⁶ Borger and Moon, *supra*, citing Rayle, Lisa et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco*, University of California Transportation Center Working Paper (Aug. 2014) <http://www.uctc.net/research/papers/UCTC-FR-2014-08.pdf>

¹⁷ The aggressive regulation of TNCs in some areas have reportedly resulted in the TNCs avoiding rides from city employees to avoid being cited for violating local law, a practice termed "greyballing." *How Uber Deceives the Authorities Worldwide*, New York Times, March 5, 2017.

Rulemaking by the CPUC

As in many jurisdictions, the initial entry of the ridesharing companies to California was met with controversy. The first action by the CPUC with regard to these firms was an enforcement action against Uber, Lyft and Sidecar for operating without obtaining authority from the CPUC. This initial action came in the form of a "cease and desist" letter that was issued in November, 2012, and which included a \$20,000 fine for each operation. The position of Uber, and to an extent the other firms, was that they were not transportation companies at all and did not require licenses, but were merely technology firms operating an electronic platform that allowed private drivers and passengers to connect with each other to arrange rides. Uber's CEO, Travis Kalanick, claimed that Uber was operating legally and stated "[w]e will continue to work with the PUC and educate them on our innovative and legal technology platform so that we can ensure that innovative transportation options can flourish here in California."¹⁸

The CPUC subsequently entered into settlements with the three operators, allowing them to operate pending a rulemaking by the Commission to set rules for the new industry. The CPUC then initiated a formal rulemaking proceeding (the "Rulemaking") by adopting an "Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services."¹⁹ That initial order set forth a list of issues which were later addressed in a multi-phased series of decisions by the Commission in the Rulemaking that have established the baseline regulations for the new TNC industry. These included a variety of safety concerns and licensing issues, as well as insurance coverage requirements. Many parties then participated in the Rulemaking, providing a diverse range of comments to the Commission as to what the proper regulatory framework should include.

The Commission's first decision in the Rulemaking was issued in September, 2013 and was entitled: "Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry." This decision, in what was termed "Phase I" of the Rulemaking, clarified many issues regarding the ridesharing business, reserving certain others for later phases of the Rulemaking. One threshold issue was the determination of the proper terminology to use in referring to these new companies. The CPUC defined these firms as "Transportation Network Companies" or "TNCs." A TNC is "an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." [Emphasis added.]²⁰ The decision avoided using the term "ridesharing," which was already a defined term

¹⁸ *PUC fines 3 app-hailing taxi startups*, SF Gate, Nov. 14, 2012, accessed 3/11/17. Uber persisted with its position that it was only a technology platform, in part by pointing to its contract with licensed TCPs to provide rides, but the Commission found that a subsidiary, Raiser, Inc., was indeed using non-TCPs to carry passengers and instituted disciplinary action against that entity.

¹⁹ The rulemaking was denoted as Commission proceeding No. R 12-12-011. Subsequent decisions in the Rulemaking are noted herein by their decision number (i.e. "Decision 13-09-045"). All of the decisions and other documents in the Rulemaking can be accessed via the Commission's website: <https://apps.cpuc.ca.gov/apex/f?p=401:1:0::NO:RP> by entering "r1212011" in the "proceeding number" field.

²⁰ Decision 13-09-045, p. 2. A very similar definition was later adopted by the Legislature as Public Utilities Code §5431(c).

in the Public Utilities and Vehicle Codes referring to work-related carpooling and similar activities.²¹

Perhaps most significantly, the 2013 decision ruled that TNCs were a subset of the category of charter party carriers, and therefore were subject to regulation by the CPUC and not by municipalities. The decision also established a series of rules and regulations for TNCs to follow, including requirements to obtain a license to operate from the CPUC, conduct a 19-point car inspection, obtain liability insurance for a minimum of \$1 million per incident, establish a driver training program, and implement a zero-tolerance program for drugs and alcohol.

After the CPUC's 2013 decision, a taxi association, the Taxicab Paratransit Association of California (TPAC), sought a rehearing on specific questions relating to the distinctions between TNCs, now subject to the CPUC's jurisdiction, and taxis, which are not. The CPUC granted a limited rehearing and addressed specific issues regarding the Commission's jurisdiction over TNCs.²² On rehearing, the Commission confirmed that TNCs do fall within the definition of a Charter Party Carrier (or TCP) under Public Utilities Code Section 5350. TPAC had argued that the CPUC, in deciding if TNCs were TCPs, should not have focused on whether the carriage was for compensation or was prearranged. The organization took specific exception to the Commission's finding on the issue of "prearrangement," which is a key factor in determining whether a driver transporting persons for hire is a taxi or a TNC. With regard to prearrangement, the decision relies on Section 5360.5, which holds that:

- (a) Charter party carriers of passengers shall operate on a prearranged basis within this state.
- (b) For the purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or by telephone.

TPAC argued that, even if the Commission found that TNC's met the definition in Section 5360.5, TNCs nevertheless fell into the exemption under Section 5353 for local taxi regulation. TPAC argued further that the determination of what constitutes taxi service should be left up to local jurisdictions and should not be made by the Commission.²³ In response, the Commission noted that it had the power to determine whether TNCs are TCPs.²⁴ The Commission then engaged in a careful analysis of the issues raised by TPAC. TPAC relied on the Commission's decision in *Babaiean Transp. Co. v. Southern California Transit Co.* (1992) 45 Cal. P.U.C.2d 85, in which the Commission examined a TCP to see if it was illegally operating as a taxi service, since it painted its vehicles to look like taxis and provided mostly short run trips. The

²¹ Section 5353(h) exempts work-related transportation for the purpose of "ride sharing" from the Act, as follows:

"Transportation of persons between home and work locations or of persons having a common work-related trip in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver."

²² Decision 14-04-022.

²³ *Id.* at p. 7.

²⁴ *Ibid.*

Commission distinguished that decision on its facts, also noting that the Commission was not bound by its own precedent in any event. It noted that, for many years, neither the Commission or the Legislature had tried to set a time constraint on prearrangement and noted that the Legislature in 2012 had specifically approved of electronic waybills.²⁵ TPAC had asserted that TNCs used taximeters, but the CPUC noted that many cities require such devices to be physically attached to the taxi vehicle, which on-line apps are not. With regard to the claim that cities should play a role in determining what is a TNC, the Commission noted that no local jurisdictions had claimed in the rulemaking that TNCs were taxicabs. Appeals to the courts of this order were unsuccessful.²⁶ The Commission's jurisdiction over TNCs was eventually confirmed by the passage of Assembly Bill (AB) 2293 (Bonilla), which was signed into law on September 17, 2014, and added §§5430 through 5443 to the Public Utilities Code.²⁷

Subsequent decisions in the Rulemaking have addressed additional operational issues, as well as the specific status of various operators.²⁸ In addition, they have addressed additional legislative enactments. After the Legislature determined that the initial 2013 CPUC decision in Phase I did not go far enough to mandate insurance coverage, it enacted Public Utilities Code §5353. This statute was taken up by the Commission in Decision 14-11-043, which addressed concerns regarding insurance coverage for the three different periods in which TNCs operate—Period 1 (the time where the app is open but no ride match has occurred); Period 2 (the time when the ride is accepted but the passenger has not yet been picked up); and Period 3 (the time with the passenger in the vehicle).²⁹ TNCs must provide a minimum of \$1 million in primary coverage during periods 2 and 3, and uninsured motorist coverage and underinsured motorist coverage during period 3. There are additional insurance requirements that apply to Period 1 and even provide for the sharing of liability if the driver is logged into more than one TNC while awaiting a ride.

In 2016, the Commission added requirements for vehicle inspections, proof of insurance, and recordkeeping relative to driver's licenses.³⁰ These decisions of the CPUC in the Rulemaking have now clarified many of the issues relative to the safety and operation of TNCs.

²⁵ Public Utilities Code §5381.5

²⁶ *Taxicab Paratransit Assn. of Cal. v. Cal.P.U.C.*, Third App. Dist. Case No. C076432, petn. denied August 22, 2014, Cal. Sup. Court Case No. S218427, petn. for writ of review denied, Nov. 12, 2014.; *DeSoto Cab. Co., Inc. v. Michael Picker et al*, (N.D. Cal. Case No. 15-cv-04375-EMC.

²⁷ "'Transportation network company' means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle." Public Utilities Code §5431(c).

²⁸ These rulings can be found at the site listed in footnote 18, *supra*.

²⁹ There has long been questions regarding potential gaps in insurance coverage as a result of TNCs viewing their drivers as private parties. This included concerns that the private insurance companies providing coverage to drivers might deny claims under the drivers' policies on the basis that the vehicles were being put to commercial purposes.

³⁰ Decision 16-04-041.

As a result, TNCs can operate legally within California, provided they comply with the CPUC's regulations.

At present, the Commission is considering guidance as to the definition of the term "personal vehicle" as used in the earlier TNC decisions and in Public Utilities Code §5431(b), added by the Legislature in 2016 via AB 2763. Many taxi operators have commented on this issue, perhaps seeking to block TNC drivers from acquiring vehicles via lease or rental. According to the statute, personal vehicle means:

a vehicle that is used by a participating driver to provide prearranged transportation services for compensation that meets all of the following requirements:

- (1) Has passenger capacity of eight persons or less, including the driver.
- (2) Is owned, leased, rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver.
- (3) Meets all inspection and other safety requirements imposed by the Commission
- (4) Is not a taxicab or limousine.

Given several of the comments on this issue, it appears that taxi operators, seeking to limit the expansion of TNCs, are going to focus on the personal vehicle issue, given recent programs of TNCs to assist their drivers in acquiring vehicles to operate. This may be the taxi industry's last battle in its losing war against the TNCs.

A Brief History of Taxi Regulation

The regulation of taxis far predates the advent of the automobile, reflecting the historic utility of being able to summon a ride on quick notice to get individuals to their destinations. In fact, in 1654, the City of London, through the "Lord Protector, with the consent of His Council," enacted "An Ordinance for the Regulation of Hackney-Coachmen in London and the places adjacent" which limited the number of coach operators, coaches and horses in London and delegated to the Court of Aldermen their supervision, including the right to make "rules and bye-laws for hackney-coachmen, subject to the approval of the Lord Protector."³¹

The distinction reflected in California law between hailed cabs and "prearranged" ones is common to many other jurisdictions and dates to the terminology used for horse-driven carriages.³² The term "hackney carriages" is commonly used to describe the first category, while "vehicle for hire" or "livery vehicle" is used for the second.³³ A third, and in many places illegal, mode is the "jitney" or "shared taxi," a form of shared ride service with multiple customers going to potentially different locations. This form was pioneered in Los Angeles in the early 20th Century, particularly as a means for immigrants to obtain cheap transportation in areas not served by public buses.³⁴ It was attacked by the owners of trolley lines, who feared

³¹ <http://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp922-924>

³² Cooper, Munday and Nelson, Taxi! Urban Economies and the Social and Transport Impacts of the Taxicab (2010) p. 1.

³³ Ibid.

³⁴ Mahesh, *From Jitneys to App-based Ridesharing: California's "Third Way" Approach to Ride-for-Hire Regulation* (2015) 88 So.Cal.L.Rev. 965 ("Mahesh").

the threat of a low-cost alternative, but could also point to issues with a lack of licensing and insurance coverage.³⁵

In California, the scheme of local taxi regulation has had a number of goals, some related to health and safety, others related to economics. As previously stated, local regulation is authorized by Government Code section 53075.5. In the area of safety, a fundamental municipal concern, cities will regulate taxis to assure a consistency of quality, both in the vehicles used and the drivers who drive them. Another is to ensure that fair charges are imposed and passengers are not subject to gouging or extortion. At the same time, a city may determine that it must limit the number of licensed taxis to ensure that adequate amount of business is available to support safe, well-trained drivers of vehicles that are clean and in a good state of repair. And it is not unheard of, particularly with regard to an industry that can generate protest actions by having dozens of cabs circle city hall with their horns blowing, that cities may enact economic regulations to protect the incomes of the cab companies. Obviously any such economic structure is substantially threatened by the advent of TNCs.

In no place has the conflict been as keen as in the City of New York, long known for its strict regulation of taxicabs. The authority to operate a taxi in New York City is designated by the possession of a city-issued medallion, which must be displayed on the hood of the car. The medallion system was established by the Haas Act of 1937, following a crippling taxi strike. At one time, a medallion was worth as much as \$1 million, and there was an active market for the ownership and financing of the medallions, often by owners who did not themselves operate cabs.³⁶ Clearly, the advent of the ridesharing revolution has disrupted this economic system. Alluding to the California origin of the ridesharing industry, Evgeny Friedman, the largest medallion owner in New York, rued the collapse of the medallion market: "New York must stand up to the hostile takeover being attempted by a Mafia-like Silicon Valley, in conjunction with predator banks. If banks bail on this industry . . . one may see crisis amongst taxi owners and operators nationwide."³⁷

A View from the Taxi World

As might be expected, the CPUC's rulings approving the operation of TNCs were not met with acclaim by the taxi industry: "You'd think if it looks like a duck and walks like a duck, it's probably a duck," William Rouse, general manager of Los Angeles Yellow Cab told NPR. "The PUC thinks it's probably a giraffe. I don't know." He added: "It's eating into our business. They're providing essentially the same service that we are without complying with all of the regulations that we have to comply with."³⁸

³⁵ This form of ridesharing has come back through new services operated by Uber and Lyft, Uberpool and Lyft Line, which use the computer platform to arrange low-cost rides for passengers willing to share a vehicle.

³⁶ *New York City's yellow cab crisis*, CNN Money, July 22, 2016
<http://money.cnn.com/2015/07/21/news/companies/nyc-yellow-taxi-uber/>

³⁷ *Investigators: Taxi king, already fined by TLC, wins court battle*, abc7nyc.com (8/12/16)

³⁸ <http://www.wnyc.org/story/311452-california-theyre-not-taxis-theyre-transportation-network-companies/>

In order to fully understand the regulatory landscape, let's take a look at what taxicabs need to comply with. Under Government Code Section 53075.5, cities are charged with the regulation of the taxicab industry. At a minimum, city regulations are to provide for the following:

- (1) A policy for entry into the business of providing taxicab transportation service. The policy shall include, but need not be limited to, all of the following provisions:
 - (A) Employment, or an offer of employment, as a taxicab driver in the jurisdiction, including compliance with all of the requirements of the program adopted pursuant to paragraph (3), shall be a condition of issuance of a driver's permit.
 - (B) The driver's permit shall become void upon termination of employment.
 - (C) The driver's permit shall state the name of the employer.
 - (D) The employer shall notify the city or county upon termination of employment.
 - (E) The driver shall return the permit to the city or county upon termination of employment.
- (2) The establishment or registration of rates for the provision of taxicab transportation service.
- (3) (A) A mandatory controlled substance and alcohol testing certification program.

Taxis are operated through a variety of business models. Some are single owner-operators, some have employees who drive company-owned vehicles, while many own fleets of cars and license them to independent contractors, who must earn a certain amount each shift to offset the cost owed to the owner of the taxi for its use. Cities accomplish their supervision of taxis through differing mechanisms. Many have their own ordinances and programs that impose their regulatory scheme. In some instances, they band together with other cities (and sometimes counties) to form joint exercise of powers agencies to exercise their supervision of taxis in a coordinated fashion. This approach recognizes the fact that many taxi companies operate across city lines.³⁹

Significantly, many cities have not limited themselves to the regulation of drivers or rates as required under the statute. They have enacted extensive regulations to require insurance coverage, but more importantly have attempted to regulate the market in ways to both ensure that an adequate number of taxis are available to meet the demand and to make sure that there are not so many taxis such that the operation is unprofitable and the quality of service is affected. In some instances, cities may have become almost anti-competitive in their regulation of taxis, if only to seek to insure a healthy taxi industry to serve its residents and visitors. But such local regulations are not effective against TNCs in California, much to the consternation of the taxi industry.

If their local taxi providers are being impacted by TNCs, one approach cities could consider would be to ensure that their ordinances are not in any way limiting the ability of taxis to compete with TNCs. As noted by Prof. Robert Cervero of the University of California, "[m]any of today's state and local regulatory frameworks carry forward legal and economic premises first

³⁹ In Orange County, for example, Orange County Taxi Administration Program (OCTAP) is a JPA of certain cities and Orange County formed to coordinate the taxicab oversight, which is administered by the non-member Orange County Transportation Authority. Taxis in the San Diego are likewise administered by its transit agency, the San Diego Metropolitan Transit System, which regulates taxis in the cities of El Cajon, Imperial Beach, La Mesa, Lemon Grove, Poway, San Diego and Santee.

devised roughly [ninety-five] years ago."⁴⁰ While some of these ordinances reflect the requirements of state law, others may have outlived their usefulness and could be revised to lower regulatory barriers that disadvantage taxis. For example, while most TNCs, having made a long trip to deliver a passenger, can pick up another ride near the drop-off location to avoid an empty return journey; a taxi may be prohibited from doing so if not registered in the city where the pick-up would occur and may have to return to their locale empty. Cities could address this by allowing additional cab operators from adjoining cities to operate within their borders or by forming a regional regulatory agency that allowed operators to cross city lines and service multiple cities.

Environmental Sustainability, Accessibility and Future Innovations

One area that is not yet clear is whether the presence of TNCs helps or hurts the environment. In some ways, the availability of convenient, low-cost transportation reduces demands for private vehicles and may reduce the demand for parking. However, what is not known is whether the circling hordes of TNCs waiting to be summoned add to air and greenhouse gas pollution, as well as traffic congestion. In addition, it has been reported that some TNC drivers commute long distances to be able to operate in lucrative areas, thus adding a traffic burden on regional roadways. In the next few years, there may be determinations about these impacts, and potentially responses to them that may limit the number of vehicles in urban areas (via congestion pricing) or that require non-polluting vehicles. It should be noted that the initial decision in Rulemaking 12-12-011 found no need for a CEQA determination, yet a recent filing by the City and County of San Francisco in Phase III of that proceeding raised the issue of CEQA compliance again, citing the potential for increased traffic and emissions. It remains to be seen how the CPUC will react to this request.⁴¹

Another area of controversy is the perceived lack of TNC vehicles that are accessible to those in wheelchairs or otherwise requiring accommodations. While some TNCs have sought to add such vehicles to their services, taxi firms that are required by local ordinance to provide a minimum number of such vehicles have claimed that an unfair burden is placed on them. In some areas, TNCs are working to make accessible vehicles available.⁴² It is not yet clear if more stringent accessibility requirements will be imposed on TNCs.

It is hard to ignore the fact that the TNCs are very interested in the development of autonomous vehicles and are in competition with each other and other companies to develop this technology. If implemented, it might mean that TNCs are able to operate their services without drivers, significantly reducing costs and putting more pressure on taxis, which may not be able to compete with the capital investment necessary to match this innovation.

⁴⁰ Cevero, Robert, Paratransit in America: Redefining Mass Transportation p. 155, quoted in Mahesh.

⁴¹ Reply Comments of SFMTA on Proposed Decision for Phase III.A Definition of Personal Vehicle, December 14, 2016.

⁴² *Uber and Lyft Are Giving Subsidized Rides to Customers With Disabilities*, <http://fortune.com/2016/09/18/uber-lyft-accessible/>

Conclusion

While the regulation of private transportation has a long history in our state and plays a crucial role in protecting the health and safety of consumers, the advent of TNCs has disrupted the established taxi industry. These changes have brought the CPUC-regulated charter party industry closer to the locally-regulated taxi industry. In fact, likely in response to the TNCs, taxi companies have created apps to allow them to be dispatched by smartphone technology and have improved their ability to process payment via credit card. So not only have the TNCs moved closer to operating like cabs, with the nearly instant ability to "prearrange," taxi companies have moved closer to TNCs, further blurring the lines.

It is therefore not surprising that both houses of the Legislature recently approved AB 650, which would have taken away the ability of cities to regulate the taxi industry altogether, consolidating it with state control over TNCs. The bill, which was strongly opposed by the League of California Cities, was ultimately vetoed by Governor Brown, who stated in his veto message "[t]he bill fundamentally alters the long-standing regulation of taxicabs by cities and counties and makes that the determination that this responsibility should be shifted to the state. I do not believe that such a massive change is justified."⁴³

Cities have a significant interest in the healthy operation of an efficient taxi industry, and, lest they lose the ability to protect that interest, need to be watchful in the event of future attempts to consolidate control at the state level. That said, as taxis adopt features of the TNCs, the differences between taxis and TNCs may become so slight that a single regulatory scheme might be enacted. In that event, cities will need to be vigilant to make sure that changes in the regulation of the taxi industry adequately protect the interests of local residents and businesses who depend on these modes of transportation. The issues involved in the implementation of autonomous vehicles are obviously beyond the scope of this paper, but the message that the TNC industry is both innovative and fast-moving and will continue to push the boundaries of traditional regulations cannot be underemphasized. We are clearly not yet at the end of the road.

⁴³ Governor's veto message to Assem. on Assem. Bill 650, (Sept. 28, 2016).