

**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS AND
SENATE COMMITTEE ON TRANSPORTATION AND HOUSING**

Senators Ben Hueso and Jim Beall, Chairs

JOINT OVERSIGHT HEARING

**Ride-hailing Disruption:
Establishing a Level Playing Field in the Transportation-for-hire Market**

Wednesday, February 17, 2016
1:30 p.m. – John L. Burton Hearing Room (4203)

Purpose of the Hearing

The growth and popularity of technology-enabled transportation ride-hailing services from companies like Lyft and Uber have raised questions about whether existing regulations advantage those companies over others that provide similar services, including taxis, livery and airport shuttles. The purpose of this hearing is to examine the transportation-for-hire market with a focus on the effects of regulations (or lack of regulations) in establishing a level playing field and ensuring adequate consumer protections. Academic and transportation experts will share their research and recommendations from a recent study by the National Academies Transportation Research Board, which examines the rise of technology-enabled transportation services and makes recommendations to address issues associated with the new mobility services. California regulators at the state and local level will discuss some of the current challenges and opportunities in regulating transportation-for-hire. Sector representatives will also provide their perspectives. This hearing will provide an opportunity to explore the broader policy issues raised by recent legislation and regulations.

Background

The rapid growth and widespread popularity of app-based ride-hailing services, such as Lyft and Uber, have disrupted the traditional taxi and limousine industries. This disruption has created economic conflicts, which are manifested in concerns about disparate regulation. This issue of fairness has been particularly acute with taxi service, since taxis and ride-hailing app-based services are very similar, yet the regulations for each differ. Furthermore, the license to operate ride-hailing services has been provided at the state level by the California Public Utilities Commission (CPUC), whereas taxis are permitted exclusively by individual local cities and counties. While the growth of these new technology-enabled services is proving wildly popular among consumers, there are a number of challenges with regulating the services to ensure both fairness in the market and adequate safety and consumer protections.

History of CPUC Jurisdiction

Since its inception in 1911 (then as the Railroad Commission), the CPUC has regulated private companies and individuals that own, operate, control or manage transportation of people and property. However, soon after, taxicabs were exempted from CPUC regulations and placed under the authority of local jurisdictions. Until the passage of federal trucking deregulation laws, the CPUC licensed and regulated many types of carriers transporting commodities over public highways within California. Currently, the CPUC's remaining transportation-related authority is limited to non-rail passenger carriers and household goods movers. Under state law, the CPUC is required to license carriers, and investigate and enforce safety and consumer protection laws for the following surface transportation carriers:

- Passenger Stage Corporations – for-hire carriers transporting passengers over public highways on an individual-fare basis, such as airport shuttles.
- Transportation Charter-Party Carriers – operate under the direction and control of the party that arranges the transportation, on a prearranged basis. Examples include tour buses, most limousines, and as of recent, transportation network companies, such as Uber and Lyft.
- Private Carriers of Passengers – includes not-for-hire motor carrier transporting passengers in buses (vehicles seating 10 or more) that are required to obtain a “CA number” from CHP.
- Household Goods Carriers – includes for-hire moving companies.

The CPUC's Transportation Enforcement Branch (TEB) within the Safety and Enforcement Division enforces and ensures safety of each of the surface transportation carriers described above. The CPUC is responsible for issuing operating permits and certificates (operating authority) to qualified applicants to operate as passenger stage corporations, charter-party carriers of passengers, and household goods carriers, and for denying, suspending and revoking operating authorities of such carriers that fail to meet statutory and regulatory requirements. This work is performed by the Transportation License Section and the Transportation and Enforcement Section within the TEB. The 45 authorized staff positions in TEB are spread evenly across licensing (14 staff), enforcement section-north (15 staff) and enforcement section-south (15 staff).

Type of Carrier	No. Permitted
Charter-party carriers of passengers	8,942
Private carrier of passengers	1,310
Household goods carriers	1,077
Passenger stage corporations	262

Taxicab Service

Unlike services regulated and licensed by the CPUC, taxicab service in California is regulated by cities and counties. Taxis are the only transportation for-hire service explicitly allowed to pick up passengers via a street hail. Taxicab owners, fleets, and drivers are often subjected to extensive regulations, particularly in large cities, and generally less extensive regulations in mid-sized and smaller cities. Therefore, the range of regulations varies across jurisdictions, including among neighboring cities. In general, taxi fares are regulated. Additionally, cities often cap the number of taxis to protect against an oversupply that could result in excessive competition that

undermines public safety with unsafe vehicles, drivers, and driving practices. The convention of capping taxi supply is an outgrowth of the experience during the Great Depression when many who were out of work flocked to taxi service, which resulted in oversupply and extreme cases of market failure. Some of those same experiences occurred in recent decades when some jurisdictions experimented with deregulation. The cities and counties restrict the number of taxis by limiting the supply of permits, or medallions (named for the metal ornament affixed to the vehicle). In some cities, the owner of the permit is able to transfer ownership.

Enter App-Based Ride-Hailing Services

Beginning in 2009, a new model of transportation services arose in cities across the United States. These original companies, including then-UberCab, allowed customers to prearrange transportation services through an online application on their smartphone or computer. Customers request a ride to a predetermined location and the application connects them with a car and driver. Payment is processed through the application so that no physical financial transaction occurs between the customer and the driver during the trip itself. The ride-hailing company takes a commission on each trip.

In June 2010, then-UberCab was utilizing its application platform to help prearrange rides for customers of CPUC-licensed charter-party carriers, particularly limousines and towncars. However, as the new service didn't fit very well within the existing regulatory framework – neither a taxi nor a charter-party carrier – the CPUC and San Francisco Metropolitan Transportation Authority issued a “cease-and-desist” order against Uber. The order directed Uber to stop advertising and cease its operations until it had acquired a valid permit to operate from the CPUC. However, even under threat of penalties (at \$1,000 per day) and potential prison time, UberCab continued to operate.

In 2012, Sidecar and Lyft were launched as new app-based prearranged transportation services, except that these services used individuals who weren't licensed with the CPUC, drove their personal vehicles, and operated on the basis of collecting a “donation” from passengers. About a month after Lyft was launched, on September 2012, the CPUC issued “cease-and-desist” orders against Sidecar and Lyft. Once again, the companies remained on the road operating their services. In the spring of 2013, Uber transformed its business model to compete with Lyft and SideCar. In the face of protest from its existing Uber Black drivers who drove CPUC licensed vehicles, Uber expanded to Uber-X, allowing non-CPUC licensed individuals to drive their personal vehicles to transport passengers using the Uber platform. In late 2012, both Lyft and SideCar would abandon the donations-based fees and move to a minimum fee approach.

CPUC Takes a Different Approach

In December 2012, after its cease-and-desist orders had largely been ignored by the app-based ride-hailing services, the CPUC announced it would open a formal investigation to evaluate services like Lyft, SideCar and Uber. By January 2013, just one month later, the CPUC announced it had reached an agreement with Uber whereby it would continue to operate while the CPUC investigation proceeded. The CPUC also agreed to drop its \$20,000 penalty against Uber. In September 2013, the CPUC formally announced it would recognize these app-based ride-hailing services as a new category of charter-party carriers called transportation network companies (TNCs). The CPUC required each TNC – not each driver – to register with the

CPUC, required TNCs to conduct criminal background checks of all its drivers, and specified insurance requirements for drivers. The CPUC also acknowledged it would open a second phase of the proceeding to consider the effects on limousines and other charter party carriers and the need to update transportation rules, including incorporating any direction required by the legislature.

Cities and Airports Continue to Weigh-in

Growing tensions between local governments, including cities and airports, and TNCs marked much of 2014. The City and County of San Francisco cracked down on unauthorized entry into airports by TNCs, since airport transportation services are regulated by each airport and often require permits and corresponding fees. In June, the City of Los Angeles Department of Transportation issued cease and desist orders against Lyft and SideCar. In the fall of 2014, both San Francisco District Attorney and Los Angeles County District Attorneys sent letters to the TNCs – Uber, Lyft and Sidecar – claiming they are operating illegally and warning them that legal action could follow if they don't make major changes. The DA's offices conducted a joint investigation and found a number of practices that violate California law. The CPUC also issued letters to the TNCs, based on the investigations and claims of local airports. The letters authored by then-CPUC President Peevey expressed "personal disappointment" regarding the violations of the TNCs and warned of the CPUC's ability to revoke permits.

Legislature Adopts New Insurance Requirements

The Legislature passed AB 2293 (Bonilla) Chapter 389, Statutes of 2014, which codified the CPUC's definition of TNC and imposed first-of-its-kind liability and other insurance coverage for TNCs and their participating drivers. As opposed to the 24 hours/7 days a week full auto commercial coverage required of the other transportation services, the bill allowed TNCs to carry a combination of personal and commercial auto insurance coverage. The type of insurance that would come into effect, and at what levels, is determined by whether the driver is seeking a passenger or has accepted a passenger/has a passenger in the vehicle. The CPUC subsequently strengthened its insurance requirements in line with the requirements of AB 2293. The CPUC established 28 rules and regulations, including requiring a minimum of \$1 million per-incident, primary commercial insurance coverage, for incidents involving TNC vehicles and drivers in transit to or during a TNC trip. The rules also provide for personal auto insurance requirements when the app is off or open for a match. (Attachment A. provides specific details of the new requirements)

More of the Same

In September of 2014, the CPUC sent letters to Uber regarding Uber's advertisement and news reports publicizing a new service, Uber Pool, that allows for fare splitting among individuals. The CPUC warned Uber individual fares were not permitted under the charter-party carrier license and that such activity would require a different type of permit to provide service under a different model. The CPUC further stated that such fares are prohibited under California law, citing Public Utilities Code Section 5401 which generally states that no charter-party carrier of passengers shall charge fees on an individual-fare basis.

Department of Motor Vehicles

In January 2015, the California DMV issued a memo warning drivers of TNCs that commercial plates are required for any commercial activity, implying such activity includes ride-hailing services. Specifically, the memo cited California Vehicle Code and stated that “any passenger vehicle used or maintained for the transportation of persons for hire, compensation, or profit is a commercial vehicle” and “even occasional use of a vehicle in this manner requires the vehicle to be registered commercially.” However, within days of the issuance of the memo, the DMV retracted it stating: “there remains uncertainty” about the effect of the law described in the memo and “recent regulatory and statutory changes affecting ride share operators.” News reports in the popular press reported on claims by Uber drivers and some anonymous dealers that Uber was prohibiting drivers who had registered their vehicles as commercial vehicles from driving for the company.

Cities Adjust Their Approach

In response to the growing tensions and challenges within the transportation-for-hire services, many cities and airports are adjusting their approach. For example, in May 2015, the City of Long Beach became the first major city in the country to loosen restrictions on taxi fares, whereby the maximum fares are maintained but taxis are allowed to lower rates or provide free rides in order to compete with the flexible pricing models of competitors Lyft and Uber. Additionally, the City of Los Angeles now requires taxis to develop their own app platform. San Francisco Airport is employing ground-breaking geofencing technology to restrict the flow of TNCs on and near airport grounds. TNC drivers wait for a ride match at designated areas on the airport grounds, generally a parking lot away from curbside arrival and departures. SFO has licensed the geofencing technology and it is being shared with other airports. Los Angeles International Airport and San Jose’s Mineta Airport are now also employing geofence technology.

CPUC Oversight Questioned

In response to a request by the Joint Legislative Budget Committee, the State Auditor developed and released a report in June 2014 concerning the CPUC Transportation Enforcement Branch’s efforts to regulate passenger carriers, as well as its use of fees it collects from carriers. The report concluded that the “branch does not adequately ensure that passenger carriers comply with state law.” The Auditor’s report cited 17 areas that are lacking ranging from addressing complaints to failure to complete and conduct adequate investigations to poor management. Many of the Auditor’s recommendations were subsequently included in legislation adopted last year, SB 541 (Hill), Chapters 718, Statutes of 2015. Among the many provisions of the bill, SB 541 extends enforcement of CPUC regulations of limousines and buses to local law enforcement, in addition to the existing authority of the CPUC and California Highway Patrol

Current Issues

Recently, the CPUC issued its Phase II proposed regulations for TNCs, which include requiring vehicle inspections by third-party Bureau of Automotive Repair certified technicians, requiring fingerprint background checks for TNCs providing services for minors, and allowing for individual fares by TNCs with the new carpooling services, so long as the TNC can provide data to demonstrate that fares are being computed on a vehicle mileage or time of use basis, or a combination. The hearing will help to surface the discussions around the adequacy of the

existing public safety requirements (including insurance, criminal background checks and enforcement) and consumer protection (fare regulations, accessibility for the disabled, and others) in order to help inform policy decisions moving forward.

Questions to Consider

- What distinguishes each of the transportation-for-hire services? Do these distinctions matter?
- What are the implications and benefits of the technology used to solicit and secure the ride?
- Which level of government should be regulating transportation-for-hire: state, regional or local government? Should differing agencies have permitting and licensing responsibilities? What agencies have the capacity to address enforcement?
- Should there be one standard for all transportation-for-hire services related to public safety, such as minimum standards for background checks, vehicle inspections, insurance and others?
- How can accessibility be ensured for the disabled or those customers needing extra assistance?
- Is surge pricing fair to consumers?