

The “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators

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**From Passenger Stage
Corporations to Transportation
Network Companies**

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Passenger Stage Corporations Then and Now

California Public Utilities Commission

- Established in the California Constitution in 1911 as the successor agency of the California Railroad Commission
- Jurisdiction over investor-owned electricity, natural gas and water utilities and intrastate telecommunications, common carrier gas and oil pipelines, rail safety and crossings, passenger stage corporations, charter party carriers, transportation network companies.
- 1917 Auto Stage and Truck Transportation Act established CPUC regulation over passenger service on California public highways

Charter Party Carrier Definition per California Public Utilities Code:

- "... every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state."
 - (CA P.U. Code §5360)

- "... the California Public Utilities Commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things... necessary and convenient in the exercise of such power and jurisdiction."
 - (CA P.U. Code §5381)

- ***Individual Fare & Taxi Limitations***

- California P.U. Code § 5401 prohibits charter-party carriers, with exception of round trip sightseeing and school bus service, from charging individual fares
- California P.U. Code § 5386.5 & CPUC Gen. Order 157-D prohibit charter-party carriers from acting as taxis

Charter Party Carrier Status

Passenger Stage Corporation

California Public Utilities Code 226. (a)

- Passenger stage corporation includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in California between fixed termini or over a regular route
- Exceptions for:
 - Operations within the limits of a single city or city and county
 - Dedicated transportation of bona fide pupils attending an institution of learning between their homes and that institution.
- PSCs are required to file tariffs with rates, schedules and terms of service; includes on-call airport shuttles where one fixed terminus is an airport.
- Insurance, inspection, and other requirements for PSC

What is the Sharing Economy?

In Transportation:

Old School: Using personal car for “ride sharing,” e.g. picking up passengers to use HOV lane.

New School: Using personal car to pick up passengers pre-arranged through an App or Internet-based service.

Regulatory question: Is the New School App-based match up “Ride Sharing” exempt from regulation or a “Charter Party Carrier” or a Taxi?

Goals: Balance public safety, consumer protection, reliability, innovation, competition, privacy

CPUC Creates New Regulatory Class, Transportation Network Companies

Decision 13-09-045 in Rulemaking 12-12-011

*Decision Adopting Rules & Regulations to Protect Public Safety
While Allowing New Entrants to the Transportation Industry*

CPUC declares jurisdiction over Transportation Network Companies (TNCs) as a charter party carrier:

“... a TNC is defined as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles.” (D. 13-09-045)

- *CPUC Decision determines TNCs do not meet the rideshare regulatory exemption, (CA P.U. Code § 5353(h))*

TNC, Not “Just an App”

- Change of dispatching device (e.g., smart phone) does not limit CPUC jurisdiction.
- (CPUC D. 13-09-045)
 - “We deem it is inconsistent with our grant of authority over transportation services to be barred from regulating a transportation service provided by TNCs based on the means of communication used to arrange the service.”
- Assembly Bill 2293 addressed TNC insurance coverage and confirmed CPUC jurisdiction.
 - CPUC in D.14-11-043 modified D.13-09-045 per AB 2293 to tighten insurance provisions for TNCs.
 - *TNC cannot rely on the TNC driver’s personal auto insurance policy, many of which include Livery exclusion.*

- In May 2014, “Hitch” applied for a CPUC TNC permit.
- Hitch proposed to pick up multiple passengers to share a ride to destinations along the same route.
- CA PU Code 5401 prohibits Charter Party Carriers from charging individual fares.
- The CPUC denied Hitch’s TNC application.
- Hitch was bought by Lyft later that September.
- Shared rides are now being offered by all major TNCs.
- The CPUC advised TNCs of the 5401 prohibition
- To date, the CPUC has not initiated enforcement action pending possible legislation, but monitors this issue.

New Wrinkles in Old Fabric (1)

- Leap Transit offers premium bus service – coffee and pressed juice bar;
- Leap removed wheel chair lifts from their buses;
- Leap Transit applied for a Passenger Stage Corporation (PSC) certificate. Application denial slated due to PSC exemption for service 98% within the boundary of a city or city and county such as San Francisco;
- Leap Transit amended application to transport outside of San Francisco;
- Leap's PSC certificate application approved. Started clock on Leap Transit fulfilling PU Code § 1031 et sec., including submitting insurance, California Highway Patrol inspection of Leap terminal and vehicles, submitting drug and alcohol testing program, and letter of acceptance of the PSC Certificate;
- Nothing had been filed by Leap Transit;
- Nonetheless, Leap Transit began operating within San Francisco;
- *CPUC Ordered Leap Transit to stop operating until requirements are met.*

New Wrinkles in Old Fabric (2)

TNC and Sharing Economy Technology and Model raise legal issues, e.g.:

- Jurisdiction: State, local, federal
- Consumer Protection
- Antitrust and Competition
- Privacy
- Liability
- Insurance
- Is Driver an employee or independent contractor?
- Compliance with state and local laws and regulations including Disability Access
- Environmental Regulations
- Intellectual Property

TNC incident recalls *Falsgraf v. Long Island Railroad Co.*

248 N.Y. 339, 162 N.E. 99 (N.Y. 1928)



<https://www.youtube.com/watch?v=LDS3f2lp6u4>

Hypo

- *TNC without a passenger, TNC application is broadcasting that car and driver are available.*
- *TNC collides with another car.*
- *Other car spins & hits fire hydrant.*
- *Fire hydrant cover pops off, flies hundreds of feet, hits a pedestrian at the other end of the block.*
- *Pedestrian breaks her leg.*
- *Who's liable?*
 - *What if TNC local manager emails drivers daily events information?*
 - *If accident happens near location mentioned in daily events calendar, does that affect liability analysis?*

Self-Driving Vehicles, Legal Issues:

- Liability, Jurisdiction, Insurance, Consumer Protection
- Embedded Choices in Autonomous Vehicle (AV) Code
- Who is the “driver” in a driverless car for purposes of regulation, liability, insurance?
 - Owner of vehicle?
 - Passenger?
 - Maker /Operator of software?
 - Developer?
 - Licensee?
 - Maker of “hardware”?
 - Who carries insurance?
 - Factors to determine insurance?
 - Who is licensed to “drive”?
 - Privacy Issues re: riders?

Autonomous Vehicle
Test in San Francisco



Autonomous Vehicles & Self-Driving Vehicles, New Legal Issues:

- Is a licensed driver required in a “driverless” car?
- Any license or insurance required for passengers?
- Access and sharing of passenger data or trips, privacy issues?
- Terms of service & scope of contract?
- *Internet of Things & Internet of Dings* - the unpredictable: people, events, bicyclists, mother nature (deer, birds, flat tires, black ice)?
- Software: Embedded choices affect accident outcomes.
- When to upgrade software & firmware? Who reboots?
- Passenger overrides route “car” chooses - liability?
- Navigating road obstacles, changes in driving conditions
- Maps / navigation issues / Loss of signal to car

Autonomous Vehicles *as* Sharing Economy Participants, Transportation Network Carriers or Passenger Stage Coaches?

- May TNCs and PSCs use Autonomous Vehicles?
- Are Autonomous Vehicles used to provide rides-for-hire participants in the Sharing Economy?
- Does status depend on AV ownership and operation?
- Would AVs used for hire be Passenger Stage Corporations, Charter Party Carriers, or TNCs, whether offering individual fares, a set or rider-designated route?
- Create regulatory framework, address legal issues.

Thank you!

For more information, please contact:

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