

**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)
_____)

Docket No. R.12-12-011

\

**THE GREATER CALIFORNIA LIVERY ASSOCIATION'S
COMMENTS TO THE CPUC'S PROPOSED DECISION**

These comments are submitted by the Greater California Livery Association (“GCLA”) – representing the more than 7,000 Charter-Party Carriers in California - in response to the proposed decision (“Proposed Decision”) of Commissioner Michael R. Peevey dated July 30, 2013, in connection with the California Public Utilities Commission’s (“CPUC”) Order Instituting Rulemaking on Regulations relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, R. 12-12-011 (“OIR”).

The GCLA became a party to this rulemaking proceeding on January 25, 2013, when we filed comments on OIR R. 12-12-011. The GCLA agrees with the determination in the Proposed Decision that New Online-Enabled Transportation Services (NOETS) are for-profit transportation companies and, as such, require CPUC regulations and oversight in the same manner as Charter-Party Carriers. We believe there are many areas of the Proposed Decision that require significant clarification and/or amplification before any final decision is rendered.

1. Administrative

The GCLA agrees with the determination that NOETSs will be required to adhere to CPUC regulations and oversight, but seeks amplification and clarity in a number of areas regarding administration and licensing. In addition to requiring all NOETSs to file applications for operating permits, the NOETSs should also be required to comply with the following requirements:

- All vehicles used by the NOETS's must be required to have a TCP number on the front and rear section of the vehicle bumper as specified in CPUC code.
- All vehicles must be commercially registered.
- All vehicles used by the NOETS's must have the state-mandated commercial livery plates.
- If the NOETSs are classified as Independent Contractors, they must have a business licenses, obtain their own CPUC licenses and comply with the all requirements in the CPUC application.

2. Insurance

The GCLA urges that the final decision include a requirement that all NOETS vehicles operated by private citizens be registered as commercial vehicles with the California Department of Motor Vehicles in accordance with the California Vehicle Code. Section 260 of the Code defines a commercial vehicle as “a vehicle which is operated or maintained for the transportation of persons for hire, compensation, or profit.” Because the Proposed Decision states that NOETSs are indeed for-profit, it is essential that the CPUC require NOETS vehicles to comply with the Vehicle Code by being registered as commercial vehicles.

Once registered as commercial vehicles, NOETSs must obtain commercial insurance as approved by the State of California Insurance Commissioner. Personal insurance typically obtained by private citizens for their personal vehicles exclude coverage in instances where the vehicles are used for hire. As such, proof of personal insurance would be insufficient to comprehensively cover the driver, the paying passenger, and the vehicle.

The requirement that NOETS’s obtain excess liability policies insuring a minimum of \$1M per incident provides the public with a false sense of coverage. The Proposed Order does not clarify if there are limits for deductibles and whether the policies pay out on claims in cases where the vehicle operator’s primary insurance denies the claim for any reason. Also missing from the Decision is an explanation of how the excess liability policies apply when disclaimers from all liability are included in NOETSs’ terms and conditions that users and drivers are required to sign.

3. Airport Access

The Proposed Decision trusts airport operators to choose whether to allow NOETSs to operate at their airports. The GCLA has no issue with this because we understand that an airport operator that carefully regulates ground transportation services might wish to avoid the risks associated with the introduction of the NOETS business model. There would be historical precedence for an airport operator taking such a position, e.g. when the shared ride business model was introduced at Los Angeles International Airport (LAX) in the 1980s, scores of shared ride companies emerged to compete with SuperShuttle and brought chaos to the curbside of passenger terminals as aggressive shared ride van drivers fought for business. Fights broke out and passenger service suffered, until the Los Angeles Board of Airport Commissioners made the decision to strictly limit and regulate the number of share ride van companies that could operate at LAX. LAX also strictly regulates how often taxis can pick up arriving passengers; currently a taxi can only access LAX every five days.

For those airports that allow NOETSs to operate within their jurisdiction, the GCLA feels strongly that the Proposed Decision should require NOETSs to adhere to the same rules, regulations and procedures followed by all other CPUC-regulated transportation companies at those airports. This would include, but not be limited to, requiring a permit issued by the airport authority, showing proof of insurance meeting CPUC requirements, displaying TCP numbers on all vehicles and state-mandated commercial livery plates as required by the CPUC Code, obtaining the appropriate airport transponders for the airports service, paying trip fees, etc.

Absent these requirement in the Proposed Decision, NOETSs could be given an unfair competitive advantage over other CPUC-licensed companies, ultimately depriving airport operators of revenue needed to help defray the cost of providing and maintaining the infrastructure that allows ground transportation companies to serve the airport. Furthermore, airport operators need to be able to identify NOETS operators so they can perform enforcement duties comparable to those performed for the charter party carriers and other CPUC-regulated companies.

4. Transportation Access

The Proposed Decision needs to precisely explain how customers with special needs will be safely and effectively accommodated by NOETS operators. For instance, who will train NOETS drivers on how to secure wheelchairs inside their vehicles? The data collection and reporting requirements incorporated in the Proposed Decision should not be a substitute for providing wheelchair accessible vehicles. There is also no requirement that NOETSs serve underserved communities (I think this needs clarification: What is an underserved community in this context? Are cabs or shuttle services required to serve these communities? This component of the section is maybe a can of worms?). Finally, the use of driver/passenger rating systems is ripe for abuse by allowing NOETS drivers to concentrate on serving lucrative markets while avoiding service to passengers identified by the rating system as unprofitable or otherwise undesirable (it is unclear what lucrative markets means and what passengers are considered undesirable).

5. Public Safety and Enforcement

The Proposed Decision should provide details and specific guidance on how NOETSs will create and conduct the required driver training program. Where will the training be conducted, what will the curriculum be, and what will the CPUC's role be in approving and monitoring such a program? Similar questions need to be answered regarding the required vehicle inspections. Where will the inspections be performed and by whom? How will the CPUC ensure compliance by NOETSs? The "zero tolerance intoxicating substance policy" seems reassuring to the public on the surface. However, by allowing NOETSs to process complaints internally, there could be unacceptable delays in the CPUC becoming aware of driver violations to the policy.

We are also concerned by the lack of requirements for NOETS vehicles to be equipped with driver and passenger safety equipment. The requirements placed on charter-party carriers should also apply to NOETSs.

6. CPUC Span of Control

The GCLA is very concerned that the CPUC is proposing to implement a new class of transportation when it is currently severely understaffed and otherwise lacks the resources necessary to handle the day to day operations, administrative, licensing and enforcement of the existing 7,000 operators it currently regulates. The Proposed Decision should be dependent on adequate funding and staffing being made available to the CPUC statewide to administer and enforce the NOETS program it is creating. Finally, the GCLA requests the CPUC address and remedy the current lack of administration and oversight of its Passenger Carrier Division particularly in light of the reported \$5 million surplus in the CPUC account earmarked for enforcement activities.

CONCLUSION

If the CPUC is going to accept and maintain jurisdictional authority over NOETSs, these companies must abide by all of the requirements imposed on Charter-Party Carriers including, but not limited to, liability insurance, workers' compensation insurance, vehicle standards, chauffeur requirements. If the CPUC is not willing to impose these requirements on NOETSs, then CPUC must change its regulation and enforcement for Charter-Party Carriers to ensure a level playing field between Charter-Party Carriers and NOETSs.

If CPUC does not have the resources to provide jurisdictional authority needed to properly administer and regulate the NOETSs, then the NOETSs should be regulated by municipalities they serve, just as taxi operators are today.

The GCLA appreciates this opportunity to provide comments on the Proposed Decision and highlight the importance of incorporating comprehensive requirements and enforcement policies into any final decision that will protect the public, keep California's roads safe, and ensure a level playing field for all transportation companies that come under the jurisdiction of the CPUC. Thank you for your attention and consideration.

Dated August 19, 2013, at Los Angeles, California

/s/ MARK STEWART
Mark Stewart
President
Greater California Livery Association
8726 S Sepulveda Blvd #2317
Los Angeles, CA 90045-0082
Phone: (866) 392-4252
marks@gcla.org