



Commissioner Liane Randolph  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

August 26, 2016

Dear Commissioner Randolph:

As you consider your proposed decision on Phase II rules applicable to transportation network companies (“TNCs”) I write to express NetChoice’s support for a TNC regulatory framework that recognizes the unique technologies and business models of transportation network companies and enables continuing innovation in transportation. However, we ask that the California Public Utilities Commission (CPUC) avoid adopting rules that would require TNCs to use fingerprint-based background checks.

Some constituencies, in arguing for a level playing field, have urged the Commission to adhere to rules that would significantly disadvantage promising new technologies and business models. Imposition of their rules would serve more to prop up older existing business models than to advance innovation or protect the public. Emerging business models must be looked at in a new way and regulations must evolve to take into account the advancement in technologies. When regulating new technologies, we must avoid trying to fit emerging technologies into boxes that were created to regulate older, pre-existing models.

NetChoice supports the Commission’s overall framework in R-12-12-011, recognizing the fundamental difference of the ridesharing business model and the need for regulations that protect the public while allowing continuing innovation. With this in mind, we write to answer two questions of the Assigned Commissioner’s Ruling Inviting/Instructing Party Comments on Background Checks of Prospective Transportation Network Company Drivers:

*A. 13. Would subjecting all prospective TNC drivers to a fingerprint-based background check violate any state statute, federal statute, decisional law, policy, order, rule, or directive? If so identify every such state statute, federal statute, decisional law, policy, order, rule, or directive and explain how a fingerprint-based background check would result in a violation.*

Fingerprint-background check requirements for TNCs would undermine California regulations and policies designed to decrease road congestion and emission of air pollutants and would also undermine California’s heritage of innovation.

Ridesharing technology is addressing many of the pressing transportation needs facing California. Transporting more passengers in fewer vehicles allows consumers to share costs and obtain lower fares.

As you know, California laws governing High-Occupancy Lanes call for the state to “stimulate and encourage the development of ways and means of relieving traffic congestion on California highways and, at the same time, to encourage individual citizens to pool their vehicular resources and thereby conserve fuel and lessen emission of air pollutants.” (California Department of Transportation, High Occupancy Vehicle Systems, *available at* [http://www.dot.ca.gov/hq/traffops/trafmgmt/hov/hov\\_sys/](http://www.dot.ca.gov/hq/traffops/trafmgmt/hov/hov_sys/)). These are the types of benefits that ride-sharing enables.

However, it has been shown that imposing a mandated fingerprint-based background check would undermine these efforts as it would discourage California residents from becoming drivers and subsequently depress the success of the ride-sharing industry. This would result in more single-occupancy vehicles on California roads, increased air pollution, and increased taxpayer costs for road repairs and similar public work projects.

At the same time, imposing regulations whose only real benefit is the depression of new industries is anti-innovation. Innovation is a core tenet of California’s success. Whether in the fields of agriculture, medicine, or technology, innovation is part of California. Steps taken by regulatory agencies to unnecessarily depress such innovation run counter to the values of the state.

*B. 14. What would be the benefit(s), if any, in requiring all prospective TNC drivers to undergo a fingerprint-based background check?*

Fingerprint-based background checks will not provide a material safety improvement in the existing TNC driver applicant screening process and instead will act to exclude Californians from participating in the sharing economy.

States across the country have found that fingerprinting background checks are flawed (*see, e.g.,* Randy Ludlow, State background-check system flawed and unreliable, Columbus Dispatch (Apr. 23, 2015), finding that, in part, “The computerized background-check system ... has been troubled for years, sometimes indicating that thousands of criminals have clean records.”). Rather than relying on potentially flawed systems for background checks, TNC operators like Lyft and Uber instead implement real-time security that is not found in existing transportation services.

Before driving for Lyft, every driver is screened for criminal offenses and driving incidents. This criminal background check includes national and county-level databases, and when necessary, local courthouse records.

Since 2012, TNCs have complied with the CPUC’s decision allowing for third party provider background checks that can be based on name-based and social security trace background checks. Lyft uses Sterling Talent Solutions (“Sterling”). For over forty years, Sterling (previously known as “Sterling BackCheck”) has reliably checked backgrounds. With over 20,000 customers around the world, including a quarter of the Fortune 100, Sterling is the world's largest company focused entirely on background checks. Sterling is certified by National Association of

Professional Background Screeners (NAPBS). Sterling conducts national and county-level databases, and when necessary, local courthouse record checks for Lyft driver applicants.

For Uber, every driver's check starts with a social security trace to identify addresses associated with the potential driver's name during the past seven years, and then searches for driver name and addresses in a series of national, state and local databases for convictions in the past seven years.

Uber uses Checkr. Checkr is accredited by National Association of Professional Background Screeners (NAPBS) and Background Screening Credentialing Council (BSCC) of NAPBS.

Checks include the Dru Sjodin National Sex Offender Public Website, National Criminal Search and several databases used to flag suspected terrorists. After finding a potential criminal record, Checkr reviews the record, either digitally or in-person at the relevant courthouse.

Moreover, when hailing a Lyft or Uber, passengers know the name of the driver and license plate, make, and model of the car. In addition, passengers also can see a photo of the driver and the vehicle type. From the moment passengers enter a TNC vehicle until they exit a ride, passengers' trips are monitored for safety. Both Lyft and Uber provide a "Send ETA" feature that allows passengers to share real-time whereabouts with friends and family. And after passengers ride, they rate their driver allowing ride sharing services to continually identify great and sub-par drivers.

TNCs are constantly improving their methods and operations. More importantly their real-time feedback systems and ratings allow them to continuously monitor drivers for safety. In fact, the CPUC set the model by allowing TNCs to use a more efficient, equally effective, background check screening process. Since the CPUC's 2012 decision, 35 states have adopted the protocol set by the CPUC.

At the same time, requiring even drivers who are only looking to work five hours a week to be fingerprinted discourages these individuals from participating in ride-sharing. While this may only take a couple of hours to complete, fingerprinting comes with a certain stigma associated with criminality and government monitoring. And it serves as another barrier to this small-time driver deciding to sign up.

We appreciate the Commission's consideration of these concerns and urge you not adopt fingerprint-background check requirements for TNCs.

Sincerely,



Carl Szabo  
Senior Policy Counsel, NetChoice  
1401 K St NW, Suite 502  
Washington, DC 20005  
202-420-7498  
[www.netchoice.org](http://www.netchoice.org)