

# South Carolina Law Review

---

Volume 66  
Issue 4 *ANNUAL SURVEY OF SOUTH CAROLINA  
LAW*

---

Article 2

Summer 2015

## Transportation Network Companies: How Should South Carolina Adjust Its Regulatory Framework

Emily Dobson

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

---

### Recommended Citation

Emily Dobson, Transportation Network Companies: How Should South Carolina Adjust Its Regulatory Framework, 66 S. C. L. Rev. 701 (2015).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact [digres@mailbox.sc.edu](mailto:digres@mailbox.sc.edu).

**TRANSPORTATION NETWORK COMPANIES: HOW SHOULD SOUTH CAROLINA  
ADJUST ITS REGULATORY FRAMEWORK?**

Emily Dobson

I. INTRODUCTION..... 701

II. BACKGROUND ..... 703

III. THE INSURANCE DEBATE ..... 705

    A. *UberX’s Insurance Structure* ..... 705

IV. REGULATORY RESPONSES IN OTHER STATES..... 707

V. SOUTH CAROLINA’S RESPONSE TO UBERX..... 713

VI. THE MODEL APPROACH ..... 719

VII. CONCLUSION ..... 723

I. INTRODUCTION

Traditional modes of transportation, such as individually-owned vehicles, taxis, and public transit, are being challenged by the emergence of technology-based alternative modes of transportation.<sup>1</sup> One example of an alternative mode of transportation is transportation network companies (“TNCs”).<sup>2</sup> TNCs are companies made up of individual drivers who provide rides to customers through an app-based platform.<sup>3</sup> This platform operates by matching ride requests from customers with available drivers.<sup>4</sup> UberX was the first TNC to arrive in South Carolina.<sup>5</sup> Uber is a company comprised of drivers who provide rides in their personal vehicles to customers through the UberX application.<sup>6</sup> Because this ride service is provided through individually-owned vehicles rather than commercially-owned vehicles, unlike a taxi company or

---

1. Lisa Rayle et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco* 1 (Univ. of Cal. Transp. Ctr., Working Paper No. UCTC-FR-2014-08, 2014), available at <http://www.uctc.net/research/papers/UCTC-FR-2014-08.pdf>.

2. *Id.*

3. *See id.* at 2.

4. *Id.*

5. *See* Abigail Darlington, *Uber Launches Ride-Sharing App in Charleston, Across South Carolina*, POST & COURIER (Jul. 9, 2014), <http://www.postandcourier.com/article/20140709/PC05/140709358>.

6. *Id.*

limousine service, UberX does not exactly fall under the same laws and regulations for commercial vehicle services.<sup>7</sup> The TNCs disclaim their categorization as a commercial carrier and insist that they are an “interactive computer service . . . simply [providing] match-making services that connect independent drivers with potential riders.”<sup>8</sup> Specifically in Uber’s terms and conditions, it states, “Uber does not provide transportation or logistics services or function as a transportation carrier.”<sup>9</sup> Regulators and legislators, however, are resistant to the TNCs’ argument and are struggling with how to best regulate this new type of transportation service.<sup>10</sup>

Like many other states across the country, South Carolina is currently trying to formulate a regulatory approach for UberX.<sup>11</sup> UberX began operating in South Carolina without meeting the requirements set out in state regulations and local ordinances for taxi companies, arguing that it was not subject to those regulations because of its alternative business model.<sup>12</sup> Not only have South Carolina’s state and local regulators been challenged with the regulation of UberX, policymakers across the county have struggled with how to regulate TNCs in light of existing regulations that do not quite apply to the TNC business model.<sup>13</sup> Taxi companies, in particular, have been pushing for the regulation of TNCs, asserting that it is unfair to not require TNCs to adhere to the same requirements.<sup>14</sup> Regulators are faced with the difficult decision of whether to force TNCs, which do not operate like taxi companies, to comply with the already-established regulations for taxis or to establish new regulations that treat TNCs as something entirely different.

Although there are many concerns surrounding the regulation of TNCs, one of the most hotly contested issues, particularly in South Carolina, is the insurance coverage that TNCs provide. This Note, focusing on UberX specifically, explains the insurance coverage Uber provides for its UberX service and how Uber has restructured its policy in response to concerns. This Note will also address, to a lesser extent, the other concerns regulators are facing. By considering the regulatory approaches in other states and South Carolina’s

---

7. Rayle, *supra* note 1, at 2.

8. R.J. Lehmann, *Blurred Lines: Insurance Challenges in the Ride-Sharing Market*, R STREET (Oct. 2014), <http://www.rstreet.org/wp-content/uploads/2014/09/RSTREET28.pdf> (internal quotations omitted).

9. *Terms and Conditions*, UBER (last updated Feb. 10, 2015), <https://www.uber.com/legal/usa/terms>.

10. See Rayle, *supra* note 1, at 3–4.

11. See Darlington, *Uber Launches*, *supra* note 5.

12. See Abigail Darlington, *Uber Ride-Sharing Company Prepares for Showdown with South Carolina Regulators*, POST & COURIER (Aug. 17, 2014), <http://www.postandcourier.com/article/20140817/PC05/140819558>.

13. *Id.*

14. *Id.*; Luz Lazo, *Cab Companies Unite Against Uber and Other Ride-Share Services*, WASH. POST (Aug. 10, 2014), [http://www.washingtonpost.com/local/trafficandcommuting/cab-companies-unite-against-uber-and-other-ride-share-services/2014/08/10/11b23d52-1e3f-11e4-82f9-2cd6fa8da5c4\\_story.html](http://www.washingtonpost.com/local/trafficandcommuting/cab-companies-unite-against-uber-and-other-ride-share-services/2014/08/10/11b23d52-1e3f-11e4-82f9-2cd6fa8da5c4_story.html).

current regulation and response thus far, this Note will ultimately suggest a model approach South Carolina should take to address the concerns of both opponents and Uber when creating its regulatory scheme.

Part II examines the business model of TNCs and specifically how UberX operates. Part III addresses the insurance debate surrounding TNCs, specifically addressing UberX's current insurance structure in Section A, the regulatory approaches of other states and cities in Section B, and South Carolina's response thus far in Section C. Part IV comments on the successes and failures of approaches taken in other states and cities and suggests a model approach that South Carolina should follow. Part V discusses the economic implications of TNCs on the transportation industry and also discusses the growth of the shared economy in industries other than transportation.

## II. BACKGROUND

Uber is just one of several transportation network companies.<sup>15</sup> TNCs operate not only in the United States, but also internationally, which has sparked the same policy concerns and debates in other countries as here in the United States.<sup>16</sup> A study conducted in San Francisco from May to June 2014 surveyed TNC users and found that most users chose to travel with a TNC rather than a taxi or public transit because of convenience and speed.<sup>17</sup> The survey also found that taxis and TNCs "serve a similar market demand" because a majority of TNC users said they would have used a taxi if they had not used a TNC.<sup>18</sup> The effect of TNCs on public transit was less clear from the survey, which found that TNCs both compete with and supplement public transit.<sup>19</sup>

TNCs offer their services through an application-based platform.<sup>20</sup> Customers download the application to their smartphones and use the application to request a ride.<sup>21</sup> The application works by connecting these customer requests with drivers in the surrounding area using GPS technology.<sup>22</sup> In most instances, these drivers do not have a commercial license and are driving personal vehicles with personal automobile insurance.<sup>23</sup> These app-based services not only make requesting a ride simpler than calling or hailing a taxi, but also make payment

---

15. Other TNCs include Lyft and Sidecar. Lehmann, *supra* note 8.

16. See, e.g., Rick Noack, *Why Germany (and Europe) Fears Uber*, WASH. POST (Sep. 4, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/09/04/why-germany-and-europe-fears-uber/> (suggesting that Germany's Courts and its people are "suspicious" of Uber's alternative to the cab industry).

17. Rayle, *supra* note 1, at 15.

18. *Id.* at 16.

19. *Id.* at 17.

20. *Id.* at 2.

21. *Id.*

22. *Id.*

23. *Id.*

much easier.<sup>24</sup> A TNC rider enters his or her credit card information on the app, which then saves this information and automatically charges the saved credit card at the end of a trip.<sup>25</sup> Customers no longer have to worry about having cash before taking a ride, nor do they have to spend extra time at the end of the ride swiping their credit card. Uber has a unique fare calculation that charges a base rate plus charges per mile and per minute subject to surge pricing during peak times.<sup>26</sup> Uber charges surge prices during times when there is a high demand for rides and a low supply of drivers and calculates the rate of the surge price by the “scale of [this] shortage.”<sup>27</sup> Uber’s fare structure differs from taxis because (1) taxis charge per mile when moving and per minute when idling whereas Uber charges per mile and minute while moving and idling, and (2) taxis do not charge surge prices.<sup>28</sup> Additionally, Uber riders do not pay an additional tip, while most taxi riders include a tip onto the fare, generally around 20% of the fare.<sup>29</sup> Even considering these differences, a typical Uber ride in most cities will be cheaper than the same taxi ride; however, consumers should be careful if an Uber fare is subject to surge pricing because a taxi ride may be cheaper in these situations.<sup>30</sup>

Uber operates a variety of services, including UberX and XL, UberBLACK, UberSUV, UberLUX, and UberTaxi.<sup>31</sup> UberX and XL, which are currently the

24. *See id.*

25. *Id.*

26. Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices in 21 Cities*, BUS. INSIDER (Oct. 16, 2014), <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10>.

27. Dan Kedmey, *This is How Uber’s “Surge Pricing” Works*, TIME (Dec. 15, 2014), <http://time.com/3633469/uber-surge-pricing/>.

28. Silverstein, *supra* note 26.

29. *Id.*

30. *Id.*

31. UberBlack and UberSUV are services with “dedicated vehicles and drivers with a for-hire license.” Rayle, *supra* note 1, at 3. UberBLACK and SUV are distinct from taxi and limousine services because they still operate through the application using on-demand requests. *Id.* UberBLACK and SUV only differ by the type of car driven to pick up passengers. *See Choice is a Beautiful Thing*, UBER, <https://www.uber.com/> (last visited Mar. 27, 2015) [hereinafter *Choice*]. UberBLACK provides rides in a black luxury sedan or crossover that seats up to four passengers, which includes vehicles like the BMW 7 Series, Mercedes S-Class, Cadillac XTS, and Lexus LS460. *Vehicle Overview*, DRIVE UBER NYC, <http://www.driveubernyc.com/cars/> (last visited Mar. 27, 2015). UberSUV provides rides in a luxury SUV that seats up to 6 passengers, which includes vehicles like the GMC Yukon Denali, Cadillac Escalade, Lincoln Navigator, and Ford Expedition. *Id.* UberLUX is a specialty division of Uber that operates on a “pop-up” basis only in select cities, such as Los Angeles, Austin, and Kuala Lumpur. *See, e.g.,* Lakshmi, *UberLUX: Available this Weekend Only!!*, UBER (Apr. 10, 2014), <http://blog.uber.com/UberluxKL> (announcing a weekend that UberLux was available in Kuala Lumpur); Nick, *Saddle Up – Uber’s Back for #SXSW13!*, UBER (Mar. 7, 2013), <http://blog.uber.com/2013/03/07/sxsw13/> (describing UberLux’s presence in Austin for a music festival); Sarah, *Being First Never Felt So Luxurious*, UBER (Dec. 17, 2014), <http://blog.uber.com/LuxLAInvite> (outlining the details of UberLux in Los Angeles). UberLUX charges substantially higher fares for passengers to ride in the most exotic luxury cars, including Hummers, Teslas, Jaguars, Bentleys, Porsches, and even a Rolls Royce Ghost. *Id.* UberTAXI also

subdivisions of Uber operating in South Carolina,<sup>32</sup> operate by non-commercial drivers providing rides in their personal vehicles.<sup>33</sup> Because this Note focuses on South Carolina's regulatory framework, it refers to UberX specifically or TNCs generally.

### III. THE INSURANCE DEBATE

#### A. *UberX's Insurance Structure*

UberX insists that it is not a transportation service provider;<sup>34</sup> however, it still provides commercial insurance coverage in limited circumstances.<sup>35</sup> When UberX first began operations, it provided commercial insurance coverage from its own policy only while drivers were "providing services"<sup>36</sup> and even then only on a contingency basis in the event that the driver's personal insurance would not provide adequate coverage.<sup>37</sup> When a driver was not "providing services," insurance coverage would fall under the driver's personal automobile insurance.<sup>38</sup> Even if an accident occurred while a driver was providing a ride, Uber instructed its drivers to file a claim with their personal automobile insurance company first before Uber would provide coverage.<sup>39</sup> Uber would then only provide coverage if the driver's personal insurance provider denied coverage.<sup>40</sup> Uber's requirement for drivers to file a personal claim before it would provide coverage raised the first concerns about Uber's insurance practices. Because almost all individual automobile insurance policies will not cover accidents that occur while a driver is charging money for rides, drivers were put in a tough position: choosing between lying to their insurance provider about using their cars commercially or telling the provider the truth and potentially losing coverage due to their commercial activity.<sup>41</sup> Policymakers

---

uses the app-based platform and on-demand requests; however, the drivers drive vehicles that look like taxis. *See Choice, supra* ("Taxi without the hassle. No whistling, no waving, no cash need.").

32. *See* Lori, *UberXL Just Rolled into South Carolina!*, UBER (Dec. 4, 2014), <http://blog.uber.com/SCuberXL>.

33. Rayle, *supra* note 1, at 2–3. Similar to the differentiations between UberBLACK and SUV, UberX provides rides in a non-luxury sedan that seats up to four passengers and Uber XL provides rides in a non-luxury SUV that seats up to six passengers. *Vehicle Overview, supra* note 31.

34. *See Terms and Conditions, supra* note 9.

35. *See, e.g.,* Lehmann, *supra* note 8 (explaining the various insurance coverage Uber provides).

36. *See* Ron Lieber, *The Question of Coverage for Ride Service Drivers*, N.Y. TIMES, Sep. 6, 2014, at B1.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

were suspicious of this practice even though Uber insisted that it never encouraged its drivers to lie.<sup>42</sup>

Raising even greater concerns among policymakers and other transportation service companies was the gap in coverage that UberX's insurance structure created.<sup>43</sup> During times a driver was not "providing services," the driver's personal insurance policy applied.<sup>44</sup> It was Uber's narrow definition of "providing services" that generated so much controversy.<sup>45</sup> Although it seems to be a simple concept—that Uber's commercial insurance policy will apply when drivers are providing services and drivers' personal insurance policies will apply when they are not providing services—Uber has argued that the time between rides does not constitute "providing services" and therefore does not fall under its primary policy.<sup>46</sup> Uber narrowly defined "providing services" as the time when a driver has a passenger in his or her car, which left a gap in Uber's coverage for the times when a driver was logged onto the application and waiting for a ride request.<sup>47</sup>

The issue of the coverage gap came to a head in California when an UberX driver hit and killed six-year old Sophia Liu in San Francisco on New Year's Eve 2013.<sup>48</sup> At the time of the incident, the driver was on the UberX application, but he did not have a passenger in the car.<sup>49</sup> Uber denied that its insurance coverage applied because the driver "was not providing services on the Uber system during the time of the accident."<sup>50</sup> In response to this tragic event, a Californian assemblywoman, Susan Bonilla, supported by insurance companies, proposed legislation that would require TNCs, including Uber, to provide insurance coverage from the time a driver logs on to the application until the time the driver logs off, regardless of whether the driver has a passenger in his or her car or is waiting on a request.<sup>51</sup>

In July 2014, Uber responded to California's proposed legislation by making only slight modifications to its insurance coverage.<sup>52</sup> As of July 2014, Uber began providing primary coverage through its commercial policy not only during

42. *Id.*

43. Jeff Bercovici, *Uber Closes 'Insurance Gap' for Ride-Sharing Drivers*, FORBES (Mar. 14, 2014, 1:28 PM), <http://www.forbes.com/sites/jeffbercovici/2014/03/14/uber-closes-insurance-gap-for-ride-sharing-drivers/>.

44. *See id.*

45. *See* Lieber, *supra* note 36, at B5.

46. *Id.*

47. *See id.*; *see also* Nairi, *Eliminating Ridesharing Insurance Ambiguity*, UBER (Mar. 14, 2014), <http://blog.uber.com/uberXridessharinginsurance>.

48. Lyanne Melendez, *Uber Sued for Wrongful Death of 6-year-old Girl in San Francisco*, ABC 7 NEWS (Jan. 27, 2014, 6:17 PM), <http://abc7news.com/archive/9408512/>.

49. *Id.* *See also* Nairi, *supra* note 47.

50. Andrew, *Statement on New Year's Eve Accident*, UBER (Jan. 1, 2014), <http://uber.com/2014/01/01/statement-on-new-years-eve-accident/>.

51. Lieber, *supra* note 36, at B5. For more detailed discussion of the proposed legislation, see *infra* Part IV.B.

52. Lieber, *supra* note 36, at B5.

rides but also while a driver, after receiving a ride request, is on his or her way to pick up the passenger.<sup>53</sup> Even though Uber extended its coverage some, Uber still only provides contingent coverage during the times when the driver is on the application but waiting on a request.<sup>54</sup> Uber describes its self-proclaimed “best-in-class” insurance coverage for UberX on its website, providing that it offers contingent coverage between rides “up to \$50,000/individual/accident with a total of \$100,000/accident and up to \$25,000 for property damage.”<sup>55</sup> Uber’s contingent coverage will only kick in if the driver’s personal insurance provider “completely declines or pays zero.”<sup>56</sup> Uber attempts to ameliorate concerns about its contingent coverage by stating that this coverage “meets or exceeds the requirements for 3rd party liability insurance in every state in the U.S.”<sup>57</sup> However, these requirements were written before TNCs existed and likely could not have predicted the insurance gap that Uber’s coverage creates.

Uber’s contingency coverage argument is based on the assumption that drivers are not “providing a service” during the time between requests; however, the moment a driver logs onto the application they are putting themselves “on call” and creating a “pool” from which customers can request a ride, “providing a great service to the Uber system.”<sup>58</sup> If drivers did not log onto the application and make themselves available to accept ride requests, there would be no pool from which to match requests with rides and, hence, no requests would ever be fulfilled. The necessity of having drivers logged onto the application and open for requests demonstrates that drivers are providing a service that is essential to the functioning of a TNC. For that reason, Uber’s narrow formulation of when a driver is actually “providing a service” seems to be merely a technical distinction that does not necessarily comport with the practical functions of an Uber driver.

#### IV. REGULATORY RESPONSES IN OTHER STATES

In response to concerns regarding the tragic death of Sophia Liu, California’s legislature introduced a bill in February 2014, which passed and will become effective July 1, 2015.<sup>59</sup> The bill amended the Passenger Charter-party Carriers’ Act to establish specific requirements for TNC liability coverage,<sup>60</sup> and also provides disclosure requirements for TNCs, requiring them to disclose in writing to their drivers the insurance coverage that the TNC will provide and to “advise a participating driver in writing that the driver’s personal automobile

---

53. *Id.*

54. Nairi, *Insurance for UberX with Ridesharing*, UBER (Feb. 10, 2014), <http://blog.uber.com/ridesharinginsurance>.

55. *Id.*

56. *Id.*

57. *Id.*

58. Lieber, *supra* note 36, at B5.

59. A.B. 2293, 2013–14 Leg., Reg. Sess. (Cal. 2014).

60. *Id.*



insurance policy will not provide coverage because the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform."<sup>61</sup> TNCs are also required to disclose to participating drivers that

the driver's personal automobile insurance policy will not provide collision or comprehensive coverage for damage to the vehicle used by the driver from the moment the driver logs on to the transportation network company's online-enabled application or platform to the moment the driver logs off the transportation network company's online-enabled application or platform.<sup>62</sup>

The statute further establishes the insurance requirements for TNCs by providing different requirements based on two distinct time periods: (1) the time during which a driver has accepted a ride request until the ride is complete and (2) the time during which a driver is logged onto the application but is in between rides and has not received a ride request.<sup>63</sup> The first time period not only includes the time during which a passenger is in a driver's car but also the time during which a driver has received a ride request and is on his or her way to pick up the customer.<sup>64</sup> During the first time period, the statute requires that either the TNC or the driver have primary transportation network company insurance.<sup>65</sup> If the transportation network company insurance is maintained by the driver, the TNC must "verif[y] that the policy is maintained by the driver and is specifically written to cover the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform."<sup>66</sup> During the second time period when the driver is logged onto the application but has not yet received a ride request, the statute requires primary transportation network company insurance maintained by a driver<sup>67</sup> or "[t]ransportation network company insurance maintained by a transportation network company that provides coverage in the event a participating driver's insurance policy under subparagraph (A) has ceased to exist or has been canceled, or the participating driver does not otherwise maintain transportation network company insurance pursuant to this subdivision."<sup>68</sup>

Like the requirements for the first time period, if the driver maintains the transportation network insurance, the TNC must verify that the policy is specifically written to cover the use of the vehicle as a TNC vehicle.<sup>69</sup> If the

---

61. CAL. PUB. UTIL. CODE § 5432(a) (West Supp. 2014).

62. *Id.* § 5432(b).

63. A.B. 2293.

64. PUB. UTIL. § 5433(b).

65. *Id.* § 5433(b)(1).

66. *Id.* § 5433(b)(4).

67. *Id.* § 5433(c)(1)(A).

68. *Id.* § 5433(c)(1)(B).

69. *Id.* § 5433(c)(4).

transportation network insurance is maintained by the driver under either time period and the policy has “lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.”<sup>70</sup>

The statute also states, “Coverage under a transportation network company insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.”<sup>71</sup> TNCs, therefore, cannot require their drivers to first file a claim with their personal automobile insurance before the TNC will provide coverage.

The statute specifically addresses how a driver’s personal automobile insurance interacts with the other insurance requirements in the statute. The entire time the driver is logged onto the application, the driver’s personal automobile insurance will not provide coverage unless the driver’s personal insurance is specifically written to provide coverage for transportation network services.<sup>72</sup> The driver’s personal insurance company can provide such coverage at its discretion, but the coverage must expressly provide that coverage applies during the time period a driver is logged onto the application.<sup>73</sup>

Rather than trying to fit TNCs under existing statutes, the California legislature created an entirely new category of commercial carriers to address concerns unique to TNCs.<sup>74</sup> Since the regulation of TNCs is new, the statute expressly provides that the Public Utilities Commission and the Department of Insurance will conduct a study on how these insurance requirements address the risks of TNCs and report their findings to the legislature.<sup>75</sup> The legislature will monitor the regulation of TNCs and the effectiveness of the insurance requirements and make adjustments as the understanding of TNCs evolves.<sup>76</sup>

Similar to California, Colorado also enacted a new statute that specifically addresses TNCs.<sup>77</sup> The introduced bill made a clear distinction between common carriers and TNCs by exempting TNCs from the definition of “common carrier” and “motor carrier.”<sup>78</sup> Instead of attempting to force TNCs to fit under common carrier statutes, the bill proposed an entirely new part to cover TNCs, stating, “Notwithstanding any other provision of law, transportation network companies, as defined in Section 40-10.1-602(3), are governed exclusively under Part 6 of this article.”<sup>79</sup> The statute affords the Public Utilities Commission authority to

---

70. *Id.* § 5433(e).

71. *Id.* § 5433(d).

72. *Id.* § 5434(b)(1).

73. *Id.* § 5434(c).

74. *See id.* § 5440(a).

75. *Id.* § 5436.

76. *See id.* § 5440(b).

77. *See* Transportation Network Company Act, COLO. REV. STAT. §§ 40-10.1-601 to 608 (2014).

78. S.B. 14-125, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

79. *Id.* § 40-10.1-117.

regulate TNCs; however, the Commission is limited to the regulation of the requirements explicitly provided in the statute, which do not include “the commission’s rate, entry, operational, or common carrier requirements.”<sup>80</sup> In order to set forth the insurance requirements, the Colorado statute, similar to the California statute, establishes specific time periods involved in TNC services. The Colorado statute refers to the time when a driver has accepted a ride until the rider is dropped off at his or her destination as a “prearranged ride.”<sup>81</sup> During a prearranged ride, either the TNC or the driver must have primary insurance coverage of at least one million dollars that is specifically for TNC services.<sup>82</sup> Until January 15, 2015, the TNC or the driver can have contingent liability insurance that will provide coverage in excess or in lieu of the driver’s personal automobile insurance during the times when the driver is logged onto the TNC application but “not engaged in a prearranged ride.”<sup>83</sup> By January 15, 2015, the driver or the TNC on the driver’s behalf must have automobile insurance that is specifically written to cover TNC services.<sup>84</sup> This requirement gets rid of contingent coverage and requires that either the driver or the TNC must maintain an insurance policy for TNC services that covers the entire time a driver is logged onto the application. The Colorado statute, like the California statute, also provides that the Division of Insurance will conduct a study of these insurance requirements and report its findings to the legislature.<sup>85</sup>

Although most states have not enacted as detailed of statutes for TNC insurance requirements as Colorado and California have, the insurance concerns are still present. For example, insurance commissioners in states across the country—including Alaska, California, Connecticut, District of Columbia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington—have released consumer alerts warning the public of the possible inadequacies of TNC insurance coverage.<sup>86</sup> In some locations in the United States, such as the cities of Fayetteville, Arkansas; Ann Arbor, Michigan; Kansas City and St. Louis, Missouri; Austin, Dallas, Houston, and San Antonio, Texas; and the states of Nebraska, New Mexico, Pennsylvania, Virginia, and South Carolina, government officials have even gone so far as to issue cease and desist orders

---

80. COLO. REV. STAT. § 40-10.1-603 (2014).

81. *Id.* § 40-10.1-604(2).

82. *Id.*

83. *Id.* § 40-10.1-604(3).

84. *Id.* § 40-10.1-604(3)(b)(I)-(III).

85. *Id.* § 40-10.1-604(3)(c).

86. *See, e.g.*, State Bulletins or News Releases, National Association of Insurance Commissioners & The Center for Insurance Policy and Research, [http://www.naic.org/documents/cipr\\_events\\_state\\_bulletins\\_or\\_news\\_releases.pdf](http://www.naic.org/documents/cipr_events_state_bulletins_or_news_releases.pdf) (displaying a collection of various consumer reports and press releases from multiple states).

prohibiting the operation of TNCs completely.<sup>87</sup> In contrast, some cities and states have welcomed the operation of TNCs, while still insisting that they meet varying degrees of regulatory requirements.<sup>88</sup> At the more liberal end of the spectrum, Baton Rouge, Louisiana, allows “TNCs to operate, free of the licensing, inspections and rate-setting regulations of the Taxicab Control Board” and does not set forth any specific insurance requirements.<sup>89</sup> The city does, however, still require that drivers pass a background check and that vehicles undergo an inspection.<sup>90</sup> Even though some cities have not issued a complete cease and desist order, their municipal ordinances imposed on TNCs may be so burdensome that they have the practical effect of a cease and desist order. For example, the city of Auburn, Alabama, imposed such burdensome ordinances on TNCs that Uber decided to cease its operations there.<sup>91</sup> The city’s ordinances mandated that TNCs be held to the same requirements as taxi companies, including the same commercial insurance, city licensing fees, signage, and background check requirements.<sup>92</sup> The strict requirements made operations economically and practically infeasible and forced Uber to give up its operation in that area. “William Guernier, Uber’s general manager for regional expansion, blamed the city of Auburn for requiring Uber to operate under ‘burdensome regulations that disregard our innovative business model.’”<sup>93</sup>

Not all cities and states have taken approaches that fall so drastically at either end of the regulatory spectrum. Chicago, Illinois, for example, took a more middle-ground approach, requiring drivers to obtain a chauffeur’s license, pass a background check, and undergo vehicle inspections.<sup>94</sup> The ordinance differentiates between drivers who drive less than 20 hours per week and those that drive more than 20 hours per week, with licensing fees of \$10,000 for the former and \$25,000 for the latter.<sup>95</sup> Even stricter legislation than Chicago’s ordinances was introduced and passed by the Illinois legislature; however, Governor Pat Quinn vetoed both bills based on the belief that regulating the

---

87. Lehmann, *supra* note 8. For South Carolina’s cease and desist order, see PUBLIC SERV. COMM’N OF SOUTH CAROLINA COMM’N DIRECTIVE, DOCKET NO. 2014-372-T, ORDER NO. 2015-46 (Jan. 15, 2015) [hereinafter Cease and Desist Order], *available at* <http://dms.psc.sc.gov/pdf/matters/5A1E42FA-155D-141F-23A066BB47E6025D.pdf>.

88. *See* Lehmann, *supra* note 8.

89. *Id.*

90. *Id.*

91. The Associated Press, *Uber Leaves Auburn Because of ‘Burdensome Regulations’*, AL.COM (Jan. 16, 2015, 10:36 AM), [http://www.al.com/news/index.ssf/2015/01/uber\\_leaves\\_auburn\\_because\\_of.html#incart\\_story\\_package](http://www.al.com/news/index.ssf/2015/01/uber_leaves_auburn_because_of.html#incart_story_package).

92. *Id.*

93. *Id.*

94. Lehmann, *supra* note 8 (citing Mary Ann Ahern, *City Council Passes Regulations on Rideshare Industry*, NBC CHICAGO (May 29, 2014), <http://www.nbcchicago.com/blogs/ward-room/chicago-city-council-rideshare-uberx-lyft--260974811.html>).

95. *Id.* (citing Ahern, *supra* note 94).

transportation industry is better left to local government.<sup>96</sup> Local officials may be more in touch with the transportation needs of their city; however, such inaction by the state government could lead to inconsistency in regulations across the state and result in confusion for TNCs, their drivers, and users.

The ordinances in Seattle, Washington, serve as a great example of a middle-ground approach that strikes a balance between the competing interests of TNCs, taxi companies, and for-hire car services.<sup>97</sup> Originally, Seattle imposed a restriction on the number of TNC vehicles that could be on the road at any given time, allotting 150 vehicles to each TNC.<sup>98</sup> The TNCs quickly opposed this vehicle cap.<sup>99</sup> In order to reach a compromise, Mayor Ed Murray brought together representatives from the TNCs, taxi companies, and for-hire car service companies.<sup>100</sup> The final compromise resulted in the following: a lift of the vehicle cap, a requirement that TNCs maintain the same level of insurance coverage as taxi companies and for-hire cars up to \$300,000 during the time when a ride has been requested until the passenger exits the vehicle, an issuance of 200 new taxi licenses, and a recognition that taxi licenses have the value of property, allowing them to be borrowed against.<sup>101</sup> Even though some councilmembers were concerned that there still existed an insurance gap, the proposal's insurance requirements passed with no increases.<sup>102</sup> By giving a little to each party, the Seattle City Council was also able to take a little from each as well.

Although several states have seemingly left the regulation of TNCs up to their municipal governments, North Carolina enacted legislation that prohibits municipalities from regulating and licensing “digital dispatching services for prearranged transportation services for hire.”<sup>103</sup> The state government has yet to specifically enact laws regulating “digital dispatching services” themselves; however, it did enact a law that provides that the Revenue Laws Study Committee will study these services over the next few months and report its findings and recommend legislation to the North Carolina General Assembly at the 2015 Regular Session.<sup>104</sup> North Carolina’s approach took the power from municipalities to enact ordinances, but refrained from enacting statutes itself

96. *Id.* (citing Erin Carlson, *Quinn Vetoes Uber Bill in a Win for Ride-Share Companies*, NBC CHICAGO (Aug. 25, 2014), <http://www.nbcchicago.com/blogs/ward-room/Quinn-Vetoes-Ride-Share-Bill-Illinois-Uber-272566381.html>).

97. See Lynn Thompson, *Seattle Council Gives Nod to Compromise Rules for Ride Services*, SEATTLE TIMES (July 14, 2014, 8:08 PM), [http://seattletimes.com/html/localnews/2024071072\\_tncscouncilxml.html](http://seattletimes.com/html/localnews/2024071072_tncscouncilxml.html).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *See id.*

103. Lehmann, *supra* note 8 (quoting 2013 N.C. Sess. Laws 413, available at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf>).

104. 2014 N.C. Sess. Law, available at <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2013-2014/SL2014-108.pdf>.

without first conducting a study on how TNCs work.<sup>105</sup> This approach will avoid inconsistent municipality ordinances across the state and will also allow the legislature to make an informed decision based on the committee's study and recommendations.

#### V. SOUTH CAROLINA'S RESPONSE TO UBERX

UberX began operating in South Carolina in July 2014.<sup>106</sup> Even though UberX has only been in South Carolina for a relatively short period of time, insurance concerns are at the forefront of taxi companies' and regulators' minds. On September 9, after several petitions had been filed by the Office of Regulatory Staff ("ORS") with the Public Service Commission ("PSC"), UberX, operating under a wholly-owned subsidiary named Rasier, LLC ("Rasier"), applied for a Class C Certificate of Public Convenience and Necessity for the Operation of Motor Vehicle Carrier.<sup>107</sup> In its application for a Class C Certificate, Rasier explained its insurance coverage, which follows the same model as previously discussed.<sup>108</sup> In a proposed order, the PSC granted Rasier's Class C Certificate, approving its insurance coverage.<sup>109</sup> Immediately after the PSC proposed an order granting the Class C Certificate, Checker Yellow Cab filed a petition to intervene and requested a hearing.<sup>110</sup> Among Checker's various concerns, Checker specifically stated that "serious issues exist as to Rasier, LLC's liability insurance" and that these issues should be "addressed [through] a public hearing."<sup>111</sup> The next day ORS sent a letter to PSC informing them that ORS reviewed Rasier's Class C Certificate application and had some concerns with the "unfamiliar insurance coverage."<sup>112</sup> ORS requested that the PSC wait to make a decision until ORS conducted further investigation on the

---

105. See Lehmann, *supra* note 8 (citing 2013 N.C. Sess. Laws 413).

106. See Lori, *South Carolina, Your UberX is Arriving Now!*, UBER (July 10, 2014), <http://blog.uber.com/SClovesUber>.

107. PUBLIC SERV. COMM'N OF SOUTH CAROLINA, APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR OPERATION OF MOTOR VEHICLE CARRIER (Sept. 8, 2014), available at <http://dms.psc.sc.gov/pdf/matters/CB2478D5-155D-141F-231E0F5B9E1A026A.pdf>.

108. See *id.* at Exhibit B.

109. PUBLIC SERV. COMM'N OF SOUTH CAROLINA, [PROPOSED] ORDER GRANTING CLASS C CERTIFICATE (Sept. 2014), available at <http://dms.psc.sc.gov/pdf/matters/9B99CD70-155D-141F-237AE6EF51964F2B.pdf>.

110. Petition to Intervene and Request for Hearing by Checker Cab Co. Inc. South Carolina at 1, Application of Rasier, LLC for Class C – Transportation Network Company Certificate of Public Convenience and Necessity for Operation of Motor Vehicle Carrier, available at <http://dms.psc.sc.gov/pdf/matters/CB2EB48E-155D-141F-2362FA66F4D24371.pdf>.

111. *Id.*

112. Letter from Jeffery Nelson, Chief Counsel and Dir. Of Legal Services, Office of Regulatory Staff, to Jocelyn Boyd, Chief Clerk and Admin., Public Serv. Comm'n of S.C. (Sep. 11, 2014) (on file with the Public Serv. Comm'n of S.C.), available at <http://dms.psc.sc.gov/pdf/matters/F4D3E2A0-155D-141F-237E0168B0BD3068.pdf>.

insurance coverage.<sup>113</sup> A few weeks later, on October 1, Going Coastal, LLC, another transportation company, filed a request to intervene in the matter of Rasier's Class C Certificate, asserting that Rasier's "insurance coverage has serious [deficiencies]."<sup>114</sup> On October 13, ORS sent a follow-up letter to the PSC, requesting that the PSC refrain from ruling on the petition until ORS conducted further investigation on Rasier's insurance coverage.<sup>115</sup> In this follow-up letter, ORS stated that it still had "unresolved concerns" about Rasier's liability coverage and requested that PSC conduct a hearing to resolve these issues.<sup>116</sup>

The ORS letters demonstrate the difficulty it has had reconciling its concerns about Rasier's insurance coverage and mark the beginning of the TNC insurance debate in South Carolina. Because the PSC recognized the significant implications of its decision on this matter, it granted ORS's request for a hearing.<sup>117</sup> Even though most parties to this debate have concerns about Rasier's insurance coverage, the South Carolina Department of Insurance sent an opinion letter to the PSC stating that Rasier's coverage was more than adequate to meet the requirements of Class C motor carriers.<sup>118</sup>

In preparation for the hearing, direct testimony was taken from individuals representing Rasier, LLC, Checker Yellow Cab Company, and ORS, addressing the various concerns with Rasier's Class C Certificate application. Testifying on behalf of Rasier, Ernest Csiszar, Insurance Consultant for Uber Technologies and Rasier, and Henry Gustav Fuldner, Director of Insurance for Uber Technologies, explain the type of insurance coverage Uber Technologies and its subsidiary Rasier maintain.<sup>119</sup> Rasier maintains insurance policies from James

113. *Id.*

114. Request to Intervene, Application of Rasier, LLC for Class C – Transportation Network Company Certificate of Public Convenience and Necessity for Operation of Motor Vehicle Carrier (No. 2014-372-T), *available at* <http://dms.psc.sc.gov/pdf/matters/0158AB9D-155D-141F-2345D7639DC2CBC1.pdf>.

115. Letter from Jeffery Nelson, Chief Counsel and Dir. Of Legal Services, Office of Regulatory Staff, to Jocelyn Boyd, Chief Clerk and Admin., Public Serv. Comm'n of S.C. (Oct. 13, 2014) (on file with the Public Serv. Comm'n of S.C.), *available at* <http://dms.psc.sc.gov/pdf/matters/6C1E5226-155D-141F-231D0C4DF73DFDA2.pdf>.

116. *Id.*

117. PUBLIC SERV. COMM'N OF SOUTH CAROLINA COMMISSION DIRECTIVE, DOCKET NO. 2014-372-T, ORDER NO. 2014-855 (Oct. 22, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/3C1733CC-155D-141F-230FB0BE708F0C41.pdf>.

118. Letter from Raymond G. Farmer, Dir., S.C. Dept. of Ins., to Jocelyn D. Boyd, Chief Clerk and Admin., Public Serv. Comm'n of S.C. (Oct. 22, 2014) (on file with the Public Serv. Comm'n of S.C.), *available at* <http://dms.psc.sc.gov/pdf/matters/9CF7B93F-155D-141F-23F25AA9EB9895C7.pdf>.

119. See Direct Testimony of Ernest Csiszar on behalf of Rasier, LLC, Docket No. 2014-372-T (Dec. 15, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/217C0F30-155D-141F-232F34C1A0E6D48E.pdf>; Direct Testimony of Henry Gustav Fuldner on behalf of Rasier, LLC, Docket No. 2014-373-T (Dec. 15, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/216EBC7D-155D-141F-239F2035BC71179D.pdf>.

River Insurance Company,<sup>120</sup> which is an Eligible Surplus Lines Insurer.<sup>121</sup> An Eligible Surplus Lines Insurer

is allowed by the state to carry on business in that state but is regulated in a manner different from an admitted carrier. The carrier must submit its financial information which is monitored by the state but it cannot write insurance that is typically available in the admitted market.<sup>122</sup>

In Fuldner's testimony, he explains the insurance coverage provided by James River in exactly the same way.<sup>123</sup> Csiszar testified that many businesses are unable to obtain insurance from the admitted market and must look to the surplus lines market because these "insurers are able to cover unique and hard to place risks . . . [and] they are able to react to market changes and accommodate the unique needs of insureds that are unable to obtain coverage from admitted carriers."<sup>124</sup> When asked if Rasier and Uber's insurance policies provide adequate coverage, Csiszar stated,

The limits of coverage of the James River policies well exceed the minimum limits of liability required by the Commission's regulations. Specifically, 10 S.C. Code Ann. Regs. 103–172 requires motor carriers transporting from one to seven passengers to maintain coverage of at least \$25,000 per person, \$50,000 per accident, and \$25,000 for property damage per accident. In particular, when a TNC Partner is transporting a passenger for hire, the James River policies provide substantially increased coverage with limits over 20 times the regulatory requirements, ensuring that Rasier and the TNC Partners are meeting the Commission's duties to protect passengers.<sup>125</sup>

He also testified that it was his "opinion that the James River policies provide more than adequate—one might even say, exceptional—coverage for the kinds of risks incurred by passenger and driver in the process of ridesharing."<sup>126</sup> Fuldner reiterated basically the same answers as Csiszar to the questions about the type of coverage Rasier and Uber maintain and its adequacy.<sup>127</sup> Fuldner was

---

120. Direct Testimony of Ernest Csiszar on behalf of Rasier, LLC at 3, Docket No. 2014-372-T.

121. *Id.* at 4.

122. *Id.* at 4–5.

123. See Direct Testimony of Henry Gustav Fuldner on behalf of Rasier, LLC at 3–4, Docket No. 2014-372-T.

124. Direct Testimony of Ernest Csiszar on behalf of Rasier, LLC at 6, Docket No. 2014-372-T.

125. *Id.* at 8.

126. *Id.* at 11.

127. See Direct Testimony of Henry Gustav Fuldner on behalf of Rasier, LLC at 3–7, Docket No. 2014-372-T.



asked several additional questions, including whether Rasier required drivers to notify their personal automobile insurers that they are driving for a TNC.<sup>128</sup> Fuldner responded that drivers are not required to notify because “Rasier does not intend to rely on each TNC Partner’s coverage to meet the Commission’s insurance requirements,”<sup>129</sup> meaning that there is no reason for the personal insurance company to know if Uber is providing primary coverage. Fuldner also addresses the insurance gap that has been so concerning to many regulators across the country and says that this concern is based on a “misunderstanding about how the policies work.”<sup>130</sup> He states that the “policies provide coverage at all times that a TNC Partner is using the Uber App, whether the TNC Partner simply has the application open, or whether they have accepted and are in the process of providing transportation services to passengers.”<sup>131</sup>

William Guernier, General Manager of East Coast Regional Expansion for Uber Technologies, also testified on behalf of Rasier. When asked specifically if Uber and Rasier are transportation companies, Guernier responded, “No. Neither Uber nor Rasier own, lease, or charter any of the vehicles or employ any of the TNC Partners that provide transportation services requested through the Uber App.”<sup>132</sup> Even though Guernier maintains that neither Rasier nor Uber are transportation companies, he testified that Rasier applied for a Class C Certificate not because Rasier believes it falls under this categorization, but because it felt it was necessary in order to continue operations in South Carolina.<sup>133</sup> Guernier states that the “rules and procedures generally applicable to Class C Motor Carrier [should be] modified to create a new and unique category of service called a ‘Transportation Network Company.’”<sup>134</sup>

John Bacot, owner of Yellow Cab Company of Greenville, South Carolina, opposes Rasier’s application for a Class C Certificate.<sup>135</sup> One of Bacot’s first concerns is Rasier’s attempt to apply for a Class C Certificate specific to TNCs: “The first issue I see is that Rasier is applying for a designation that doesn’t exist. I am familiar with the regulations concerning Class C Taxi and Class C Charter but have no idea what a Class C Transportation Network Company is.”<sup>136</sup> William Guernier addressed this concern in his rebuttal testimony, stating:

---

128. *Id.* at 12.

129. *Id.*

130. *Id.* at 10.

131. *Id.*

132. Direct Testimony of William Guernier on behalf of Rasier, LLC at 4, Docket No. 2014-372-T (Dec. 15, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/459F3640-155D-141F-23F789C02394E3C5.pdf>.

133. *See id.* at 7.

134. *Id.*

135. Direct Testimony of John Bacot on behalf of Checker Yellow Cab Co., Inc. at 2–4, Docket No. 2014-372-T (Dec. 29, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/E901357C-155D-141F-239477D45740F73F.pdf>.

136. *Id.* at 3.

Rasier filed its application for a Class C—TNC Certificate to demonstrate its willingness to work with state regulators. Although I am not an attorney, it is my understanding that S.C. Code Ann. § 58-23-240 permits ORS, upon order of the Commission, to issue a Class C certificate to applicants, and does not restrict the certificate to Taxi or Charter operations as Mr. Bacot suggests.<sup>137</sup>

Bacot made several requests in his testimony, including a request that the Commission deny Rasier's application. Bacot requested, however, that if the Commission decides to approve the application, it should be subject to the following conditions: Uber, not just Rasier, should be required to apply for the application because Rasier is merely a "throw away" corporation intended to "shield Uber from liability;" Uber should petition for a rule change rather than trying to apply for a Class C Certificate that does not apply to TNCs; Uber should not be granted all of its requested waivers of the normal Class C Certification requirements; Uber should be required to have a list of its vehicles on file with the ORS; and drivers should be required to notify their personal automobile insurance providers that they are providing TNC services.<sup>138</sup>

Dawn Hipp, Director of ORS, testified as to the specifics of obtaining a Class C Certificate. In her testimony, she explained the process as follows:

Commission regulation 103-133.4 requires an applicant to demonstrate that it is fit, willing and able to perform as a Class C passenger carrier. This demonstration can be made by completing the Class C Application and its Exhibits and submitting it for approval to the Commission . . . . If no intervention is received by the Commission on the application, the Commission may approve the applicant without a hearing. The Commission will issue an Order granting approval of a Class C CPCN and provide the applicant 90 days to comply with all Commission regulations prior to the ORS issuing a Class C CPCN. During the 90-day period for compliance, ORS will conduct an inspection of the applicant's vehicles and driver qualification records to confirm that the applicant has complied with the Commission's Order. The applicant must provide to ORS proof of insurance that meets the requirements set forth in Commission regulation 103-170 . . . . The ORS will issue a Class C CPCN to the applicant upon completion of the Commission's

---

137. Rebuttal Testimony of William Guernier on behalf of Rasier, LLC at 2, Docket No. 2014-372-T (Jan. 5, 2015), *available at* <http://dms.psc.sc.gov/pdf/matters/5A16E4B4-155D-141F-2374585FDD957591.pdf>.

138. Direct Testimony of John Bacot on behalf of Checker Yellow Cab Co., Inc. at 19–21, Docket No. 2014-372-T.

requirements.<sup>139</sup>

Addressing the ability of applicants to receive waivers of certain Class C Certificate requirements, Hipp stated, “Commission regulation 103-101.2 allows the Commission to consider a waiver of its regulations in situations where compliance with the regulations is determined to be unusually difficult or not in the public interest.”<sup>140</sup> Hipp also testified that applicants are not allowed to operate until they receive their certificate.<sup>141</sup>

ORS also asked Thomas Salane, a Columbia attorney and South Carolina Counsel for the American Insurance Association, to testify on its behalf.<sup>142</sup> Speaking for the American Insurance Association, Salane stated that the AIA recommends that the solution to the insurance gap is to require TNCs or their drivers to “obtain commercial automobile coverage like any other livery, taxi or limousine service is required to have.”<sup>143</sup>

Due to various discovery disputes, the hearing scheduled for the end of January 2015, at which the Commission planned to decide on Rasier’s Class C Certificate application, was suspended.<sup>144</sup> ORS immediately opposed the hearing suspension by writing a letter to the Commission.<sup>145</sup> In this letter, ORS complains that it has already refrained from issuing citations since Rasier/Uber began its operations in July 2014, waiting for a decision from the Commission.<sup>146</sup> ORS points out that several municipalities have also been waiting on a decision from the Commission before taking any action.<sup>147</sup> ORS requested that the Commission resolve the matter by the original hearing date of January 26, 2015, because the actions of other officials are pending the Commission’s decision.<sup>148</sup> In response to ORS’s letter and its concern that Uber/Rasier was continuing to operate without a Class C Certificate, the Commission did not decide to keep the hearing scheduled for January 26, 2015,

139. Direct Testimony of Dawn Hipp on behalf of the South Carolina Office of Regulatory Staff at 4–5, Docket No. 2014-372-T (Dec. 29, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/E9CD83AE-155D-141F-23F8166425427E00.pdf>.

140. *Id.* at 5.

141. *Id.* at 14.

142. Direct Testimony of Thomas C. Salane on behalf of the South Carolina Office of Regulatory Staff at 1–2, Docket No. 2014-372-T (Dec. 29, 2014), *available at* <http://dms.psc.sc.gov/pdf/matters/E9D029DA-155D-141F-234CCA1A04554BD8.pdf>.

143. *Id.* at 6.

144. PUBLIC SERV. COMM’N OF S.C. HEARING OFFICER DIRECTIVE, DOCKET NO. 2014-372-T, ORDER NO. 2015-43H (Jan. 12, 2015), *available at* <http://dms.psc.sc.gov/pdf/matters/E5774A79-155D-141F-23F8294979FBA8B8.pdf>.

145. Letter from Jeffery Nelson, Chief Counsel and Dir. of Legal Serv., Office of Regulatory Staff, to Randall Dong, Public Serv. Comm’n of S.C. (Jan. 13, 2015) (on file with the Public Serv. Comm’n of S.C.), *available at* <http://dms.psc.sc.gov/pdf/matters/EFC54420-155D-141F-2399AD8FCE005A49.pdf>.

146. *Id.*

147. *Id.*

148. *Id.*

but instead decided to order Uber/Rasier to cease and desist its operations in South Carolina, pending the approval and issuance of a Certificate.<sup>149</sup> A hearing on the substantive issues of the Class C Certificate will not be held until the discovery disputes are resolved.<sup>150</sup>

## VI. THE MODEL APPROACH

South Carolina is currently at a standstill regarding its regulation of UberX. Instead of making timely regulatory decisions, its Commission has instead decided to order a cease and desist until these decisions can be made.<sup>151</sup> In a letter addressed to the Commission, South Carolina Governor Nikki Haley described the cease and desist order as “extremely disappointing.”<sup>152</sup> Gov. Haley explained her disappointment by stating that the Commission’s decision is in direct conflict with her administration’s and the General Assembly’s goal of making South Carolina “more business-friendly” and “limit[ing] government interference in the private sector.”<sup>153</sup> Governor Haley urges the Commission and the General Assembly “to resolve this issue before we send a message to the rest of the nation and the world that South Carolina is not the kind of place they want to do business.”<sup>154</sup> Hopefully, South Carolina’s General Assembly will take up the regulation of TNCs soon; however, in the meantime, the Commission should look to the actions of other states and cities to come to an interim resolution.

There lies a compromise somewhere between the taxi company’s insistence that UberX meet the same requirements as taxi companies and Uber’s insistence that UberX is not subject to any of the regulations of motor carriers because it is not a transportation company. States and cities with the most well thought-out and effective approaches have neither tried to force TNCs under established taxi regulation nor have they allowed TNCs to operate completely free of regulation.<sup>155</sup> Rasier/Uber applied for a Class C Certificate in South Carolina simply to appease the Commission and ORS.<sup>156</sup> However, attempting to force a TNC into a categorization that was established before the TNC business model even existed is proving to be complicated. Rather than argue over every detail of every requirement of the Class C Certificate that the Commission must waive in order to approve Rasier’s application, the Commission should consider treating

---

149. Cease and Desist Order, *supra* note 87.

150. *Id.*

151. *Id.*

152. Letter from Nikki Haley, Governor, S.C., to Members of the Public Serv. Comm’n of S.C. (Jan. 16, 2015) (on file with the Public Serv. Comm’n of S.C.), *available at* <http://dms.psc.sc.gov/pdf/matters/8D8AFA5A-155D-141F-238985BE110405FD.pdf>.

153. *Id.*

154. *Id.*

155. *See supra* Part IV.

156. *See supra* Part V.

TNCs as an entirely new categorization, looking to the regulations imposed in other states and cities as a model.

Even though the comprehensive statutes of California and Colorado would not be a temporary fix for South Carolina until more substantial action can be taken,<sup>157</sup> the Commission should notice how these statutes treat TNCs as a distinct category. Legislators in these states reached the decision to enact statutes treating TNCs as something entirely new after months of discussions, debates, and amendments. South Carolina should refrain from making decisions in a vacuum and save itself time by looking at the solutions reached by other states, which have had a greater amount of time to study the operation of TNCs. Treating TNCs differently than other motor carriers not only makes sense, due to the unique TNC business model, but it also avoids confusion about which motor carrier or taxi statutes and regulations apply to TNCs, and if they apply, how they will be enforced. Colorado's statute did a good job exempting TNCs from the terms "common carrier" or "motor carrier" wherever they appear in the statute, and also by explicitly stating that the added Part 6, addressing TNCs, would be the only statute to govern TNCs.<sup>158</sup> When South Carolina's General Assembly takes up the issue of TNCs, it should follow Colorado by enacting an entirely new provision in the statute that deals exclusively with TNCs. Until then, the Commission can lay the groundwork for such a distinction by creating new rules for a new form of business instead of torturing the Class C Certificate requirements and the TNC business model until they are forced into unnatural alignment.

Even though many states and cities disagree on the requirements of commercial insurance, licensing fees, and permit requirements, the majority seem to be in agreement that TNC drivers should still be subject to background checks and TNC vehicles should undergo initial and periodic inspections.<sup>159</sup> If consumer safety is in fact the main goal of South Carolina's Commission, it should require driver background checks<sup>160</sup> and vehicle inspections,<sup>161</sup> which are already an established practice of UberX. As evidenced by its vehicle inspection, websites specifically created for UberX operating in Colorado and California, UberX is willing to strictly adhere to the vehicle inspection

---

157. *See supra* Part IV.

158. *Id.*

159. For example, Colorado's statute imposes detailed driver qualifications and vehicle inspection requirements. COLO. REV. STAT. § 40-10.1-605 (2014). Even Baton Rouge, Louisiana, a city that took a fairly liberal approach to regulation, still requires background checks and vehicle inspections. Lehmann, *supra* note 8.

160. *See Uber Background Checks*, UBER (Apr. 25, 2014), <http://blog.uber.com/driverscreening>.

161. Many states and cities require vehicle inspections in order to promote consumer safety. *See e.g., Vehicle Inspections*, UBER COLORADO, [http://uberxcolorado.com/drive/?page\\_id=12](http://uberxcolorado.com/drive/?page_id=12) (last visited Mar. 27, 2015); *Vehicle Inspections*, DRIVE UBER SAN DIEGO, <http://www.driveubersd.com/vehicle-inspections> (last visited Mar. 27, 2015).

requirements set forth by legislation.<sup>162</sup> Without wasting more time debating every requirement for a Class C Certificate while still protecting the public, South Carolina's Commission can immediately impose rigorous background check and vehicle inspection requirements that UberX will be able to easily comply with. This is not only a straightforward and relatively simple requirement to implement, but such a requirement gets to the heart of the concern for public safety. Although the insurance requirements may take more time to sort out, the Commission should allow UberX to continue operating subject to these rigorous background checks and vehicle inspections until more comprehensive regulations addressing the more complex issues can be resolved.

The Commission, and eventually the General Assembly, should avoid regulations and statutes that impose requirements that are too burdensome for TNCs and their drivers to comply with. Many TNC drivers work part-time; therefore, regulations that require drivers to purchase commercial insurance that can cost between \$8,000 and \$10,000 annually or pay expensive licensing fees, such as Chicago's fee of \$10,000, make working as a part-time TNC driver impractical, if not impossible.<sup>163</sup> From the TNC's standpoint, burdensome insurance and licensing requirements can also make the operations so impractical or impossible that they effectively work as a cease and desist order.<sup>164</sup> As Governor Haley vehemently asserted in her letter to the Commission, South Carolina should neither discourage nor inhibit innovation and the growth of business in this state nor should it "disrupt our residents' jobs."<sup>165</sup> Too much regulation would do just that. Therefore, the Commission and the General Assembly should use the failures of regulations that were too strict, such as a proposed bill in Illinois that was vetoed by Governor Pat Quinn<sup>166</sup> and the strongly opposed ordinances in Birmingham, Alabama,<sup>167</sup> as examples of what not to do. As one commentator pointed out, some of these regulations fail to serve any legitimate concern for public safety: "For example, what does having an ordinance requiring a \$45 minimum for an executive sedan have to do with keeping consumers safe?"<sup>168</sup> South Carolina should narrow its focus on requirements that truly go to public safety and ignore the background noise of

---

162. *See id.* (requiring vehicles to pass a nineteen-point inspection).

163. *See* Lehmann, *supra* note 8.

164. *See supra* Part IV.B (discussing ordinances in Auburn, Alabama).

165. Letter from Nikki Haley, S.C. Governor, to Members of the Public Service Commission (Jan. 16, 2015), available at <http://dms.psc.sc.gov/pdf/matters/8D8AFA5A-155D-141F-238985BE110405FD.pdf>.

166. Lehmann, *supra* note 8.

167. Joseph Bryant, *Birmingham vs. Uber: Council President Still Open to Talking to Company After Passing New Rules Uber Calls Unfair*, AL.COM (July 29, 2014), [http://www.al.com/news/birmingham/index.ssf/2014/07/birmingham\\_vs\\_uber\\_council\\_pre.html#in\\_cart\\_related\\_stories](http://www.al.com/news/birmingham/index.ssf/2014/07/birmingham_vs_uber_council_pre.html#in_cart_related_stories).

168. Cameron Smith, *Dealing with Uber, Birmingham City Council Must Understand that Common Sense Regulation is Not the Same as Deregulation: Opinion*, AL.COM (Sept. 25, 2014), [http://www.al.com/opinion/index.ssf/2014/09/dealing\\_with\\_uber\\_birmingham\\_c.html](http://www.al.com/opinion/index.ssf/2014/09/dealing_with_uber_birmingham_c.html).

disgruntled taxi cab companies, which most likely have increased competition as their main concern rather public safety.

Focusing more on the public safety of UberX and less on the concerns raised by other transportation companies does not mean that South Carolina regulators should ignore the interests of taxi companies and other for-hire transportation services altogether. The approach taken in Seattle, Washington, serves as an example of how effective a compromise can be.<sup>169</sup> Like Seattle, South Carolina should figure out what would help taxi companies more effectively compete with UberX and entertain the possibility of working with the taxi companies to come to a mutually agreeable solution... Currently, the conversation between the South Carolina taxi companies, represented by Yellow Cab, and Rasier/Uber is no conversation at all. The two parties are no longer just fighting over substantive issues; in fact, there are so many unresolved discovery disputes that the hearing was suspended.<sup>170</sup> In order to make any progress, the Commission needs to take control of the situation by refocusing attention on the real issues and finding a way to give both parties something they want in order to reach a compromise.

Even though several municipalities in South Carolina have refrained from enacting ordinances until the Commission makes a decision, the General Assembly should also consider proposing legislation similar to North Carolina's that prohibits municipalities from regulating TNCs.<sup>171</sup> This would prevent municipalities, which might be unaware of the potential detrimental consequences of over regulation, from enacting ordinances too rashly and without state guidance. Also, leaving the regulation of UberX up to the state maintains uniformity and avoids the confusion that would result from every city having different regulations. Because South Carolina is a relatively small state and travel between the various cities in which Uber operates is frequent, maintaining consistent regulations throughout the state will help the public understand TNC regulation and increase consumers' certainty of TNC requirements, no matter what city in South Carolina they may be in.

Uniform regulations may also encourage UberX drivers to travel to other South Carolina cities to provide services because the drivers will be assured that if they meet the requirements in one city they will also meet all the requirements in another city. This could not only benefit drivers who may want to travel to a more lucrative market but could also benefit consumers by increasing the supply of drivers when the demand may be high. For example, suppose there is going to be a large music festival in Charleston that draws tens of thousands of people to the city. To capitalize on the probable increase in demand for rides, UberX drivers from Myrtle Beach or Columbia may want to travel to Charleston for the

---

169. See *supra* notes 94–98 and accompanying text.

170. PUBLIC SERV. COMM'N OF SOUTH CAROLINA COMM'N DIRECTIVE, DOCKET NO. 2014-372-T, ORDER NO. 2015-46 (Jan. 15, 2015), *available at* <http://dms.psc.sc.gov/pdf/matters/5A1E42FA-155D-141F-23A066BB47E6025D.pdf>.

171. Lehmann, *supra* note 8.

day. Customers will benefit from this increase in supply because they will be able they will experience lower wait times and will be able to get rides at a lower surge pricing rate.<sup>172</sup> If Charleston had stricter or even just different ordinances than Columbia or Myrtle Beach, drivers may be discouraged from traveling to Charleston for fear of violating some requirement they may be unaware of.

Finally, South Carolina should implement a regulation or legislation that requires either a committee or regulatory agency to conduct a study and report its findings to the General Assembly, which would be comparable to the studies required by the California, Colorado, and North Carolina statutes.<sup>173</sup> This study should be commenced as soon as practicable so that the General Assembly can use its findings to enact initial legislation. Like California and Colorado, which continued their studies even after initial TNC statutes were enacted, South Carolina should require a study to continue in order to monitor the effectiveness of the new legislation.<sup>174</sup>

## VII. CONCLUSION

TNCs are changing the way in which consumers, regulators, and other transportation services think about getting from point A to point B. TNCs present difficult questions for regulators, who are faced with the challenge of finding a balance between protecting public safety and encouraging innovation and maximizing consumer choice, all while treading in unknown waters.<sup>175</sup> States and cities across the United States have taken regulatory approaches that vary the spectrum from complete prohibitions on the operations of TNCs to very little regulation at all.<sup>176</sup> The model approach suggested in Part IV is somewhere in the middle, taking into account the successful and less successful aspects of approaches in other cities and states. Even though the process of establishing a regulatory framework is gradual, South Carolina is being urged from all directions—from other government officials, transportation companies, and even Uber itself—to take some sort of stance on the operation of UberX in the state. South Carolina is at an advantage because so many other states have had time to conduct more in depth studies of TNCs and implement regulation based on information gathered over time. Instead of starting from ground zero, as South

---

172. “With surge pricing, Uber rates increase to get more cars on the road and ensure reliability during the busiest times. When enough cars are on the road, prices go back down to normal levels.” *What is Surge Pricing and How Does it Work?* UBER (Feb. 24, 2015), <https://support.uber.com/hc/en-us/articles/201836656-What-is-surge-pricing-and-how-does-it-work>.

173. See discussion *supra* Part IV.

174. *Id.*

175. See *An ‘Uber’ Problem for Cities: Balancing Innovation with Regulation*, WHARTON UNIV. OF PENN. (Nov. 20, 2012), <http://knowledge.wharton.upenn.edu/article/an-uber-problem-for-cities-balancing-innovation-with-regulation/> (citing Ron Linton, *The D.C. Taxi Commission’s Problem with Uber*, WASH. POST, [http://m.washingtonpost.com/opinions/the-dc-taxi-commissions-problem-with-uber/2012/01/25/gIQAgIzHWQ\\_story.html](http://m.washingtonpost.com/opinions/the-dc-taxi-commissions-problem-with-uber/2012/01/25/gIQAgIzHWQ_story.html)).

176. See *supra* Part IV.



Carolina seems to currently be doing, the Commission and the General Assembly should use the work done by other state and city governments to establish measured, well thought-out regulations as quickly as possible.

Regulators are not the only ones facing challenges with the emergence of TNCs. Taxi companies have met the operation of TNCs with resistance, insisting that regulators impose requirements on TNCs that keep competition fair.<sup>177</sup> While fair requirements are important, regulators should not protect taxi companies from competition that encourages innovation.<sup>178</sup> An example of how fair competition from TNCs can encourage innovation is the recent implementation of a smartphone application by a taxi company in Seattle, Washington.<sup>179</sup> Seattle Yellow Cab created an application where customers can book rides similar to the application platform offered by Uber and Lyft.<sup>180</sup> The cab application even has some advantages over TNC services, such as no surge pricing, an option to pay with cash at the end of the ride, and the ability to book a ride in advance, demonstrating that with the right regulatory approach, both TNCs and other transportation services can not only survive but also flourish.<sup>181</sup>

The transportation industry is not the only industries that will be challenged by novel forms of competition. With the growth of the shared economy, assets that have traditionally been purchased for use are now increasingly being consumed as a service instead.<sup>182</sup> TNCs function in this shared economy by allowing individuals to share their car and provide a ride to someone who otherwise would have to drive their own car, “reducing the need to own one’s own car.”<sup>183</sup> “Most cars spend most of their time just parked, taking up space and performing no useful function. If we could all drive the same number of aggregate miles but with a substantial reduction in the number of cars on the road, that would benefit everybody.”<sup>184</sup> The assets that are most widely shared in this new, shared economy include “items that are expensive to buy and are widely owned by people who do not make full use of them.”<sup>185</sup> Besides cars, other examples include bedrooms, “camping spaces in Sweden, fields in Australia, and washing machines in France.”<sup>186</sup> Airbnb is the one of the most widely used shared economy platforms, matching hosts who have a bedroom

177. See Luz Lazo, *Taxicab Interests Unite to Fight*, WASH. POST, Aug. 11, 2014, at B6.

178. See David Alpert, *The Next Step for Regulating Uber*, WASH. POST (Sept. 19, 2014), [http://www.washingtonpost.com/opinions/the-next-step-for-regulating-uber/2014/09/19/0e730c8e-3514-11e4-8f02-03c644b2d7d0\\_story.html](http://www.washingtonpost.com/opinions/the-next-step-for-regulating-uber/2014/09/19/0e730c8e-3514-11e4-8f02-03c644b2d7d0_story.html).

179. Taylor Soper, *Seattle’s Largest Taxi Fleet Fights Back Against Uber, Lyft with Its Own Hailing App*, GEEKWIRE (December 23, 2014), <http://www.geekwire.com/2014/seattles-largest-taxi-fleet-fights-back-uber-lyft-hailing-app/>.

180. *Id.*

181. *Id.*

182. See *Peer-to-Peer Rental: The Rise of the Sharing Economy*, ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

183. Lehmann, *supra* note 8.

184. *Id.*

185. *Peer-to-Peer Rental: The Rise of the Sharing Economy*, *supra* note 182.

186. *Id.*

they would like to share with guests who are looking for a place to stay.<sup>187</sup> Other platforms that match owners with renters include RelayRides and Snapgoods. This technology lowers transaction costs so sufficiently that consumers are able to make these exchanges where previously transaction costs of the small type of exchange would be so high as to make it not worthwhile.<sup>188</sup>

Some of the benefits of the shared economy include compensation to owners of underused assets, cost savings of renters who no longer have to either purchase the asset or rent it from a traditional provider, and environmental benefits if more cars are rented and less are on the road.<sup>189</sup> The future of the shared economy is uncertain; however, consumer protection is one of the main concerns.<sup>190</sup> Although the system of rating owners and renters, performing background checks, and writing online reviews works pretty efficiently to sort out the bad owners and renters, some regulations will likely be established to ensure consumers are protected in the new shared economy. Exactly what these regulations will look like in the newer industries of the shared economy, such as Airbnb, remains uncertain. However, one thing remains clear: the shared economy has grown to a point where regulators and traditional forms of business will not be able to ignore it.

---

187. *See, e.g., id.* (“Owners make money from underused assets. Airbnb says hosts in San Francisco who rent out their homes do so for an average of [fifty-eight] nights a year, making \$9,300.”).

188. *Id.*

189. *Id.*

190. *Id.*

\*