

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0165TR

IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S
TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO
REGULATIONS 723-6, IMPLEMENTING SENATE BILL 23-187 AND ESTABLISHING
DIFFERENT TIERS OF PERMIT FEES FOR TRANSPORTATION NETWORK COMPANIES.

RECOMMENDED DECISION ADOPTING RULES

Issued Date: August 27, 2024

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I. STATEMENT

1. The Colorado Public Utilities Commission (“Commission”) issued a Notice of Proposed Rulemaking (“NOPR”) to consider amendments to the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, more specifically, the Commission's Transportation Network Company (“TNC”) rules. The statutory authority for adoption of these rules is set forth in §§ 40-2-108(1), 40-10.1-606(2)(c), and 40-10.1-608(1), C.R.S., as well as Senate Bill (“SB”) 23-187, enacted and effective May 18, 2023.

2. The Commission issued a NOPR on April 12, 2024, to review, examine, and consider revisions to its rules regarding TNCs, as it pertains to legislative and statutory changes incorporated by SB 23-187, which was passed by the Colorado Legislature during the 2023 session. The proposed amendments reflected the Commission's intent to amend and update the TNC rules to establish different tiers of permit fees for TNCs.

3. The proposed amendments to the TNC rules were available for review as Attachment A (redline) and Attachment B (clean) through the Commission's website.

4. The Commission welcomed comments from interested rulemaking participants, regarding the amendments proposed in this NOPR. Participants were encouraged to submit comments that include any suggested revisions to the rule language in legislative (*i.e.*, strikeout) format.

5. Initial written comments were requested to be filed no later than May 24, 2024. Any comments responsive to the initial comments were requested to be filed no later than June 7, 2024.

6. The rulemaking hearing on the proposed rules and related matters was scheduled for June 20, 2024.

II. **BACKGROUND**

A. **Legislative History**

7. On May 18, 2023, Governor Jared Polis signed SB 23-187, Public Utilities Commission Administrative Fee Setting Transportation Services. This bill, in part, amended § 40-10.1-606, C.R.S., to allow the Commission to administratively set the annual permit fees for TNCs.

8. The annual permit fees had previously been set in statute, dating back to the passing of SB14-125 in June 2014. In addition, the amendments enacted in SB 23-187 allow the Commission to establish different tiers of permit fees for distinct types of TNCs, which are administratively set, based on the Commission's consideration of various market factors. These market factors include a TNC's market share in the areas in which it operates, the number of years a TNC has operated in Colorado, a TNC's ownership structure, and whether a newly formed TNC entering the market is an affiliate or subsidiary of an existing motor carrier or is a taxicab company or shuttle company converting to a TNC, pursuant to § 40-10.1-605(1)(n), C.R.S. The effective date of these statutory changes was May 18, 2023.

9. The proposed amendments added language to TNC Rule 6702(b)(II), which references the newly created TNC Rule 6702(e), as it pertains to a TNC being required to pay an annual application fee to obtain a TNC permit.

10. The newly created TNC Rule 6702(e) outlined the process through which TNCs may demonstrate which administratively set annual application fee tier is most appropriate for their operation. This is accomplished through the completion and submission of a questionnaire, on a Commission-prescribed form, prior to filing a TNC permit application.

11. The criteria the Commission considers in establishing the annual application fee tiers included a TNC's market share in the areas in which it operates, the number of years a TNC has operated in Colorado, a TNC's ownership structure, and whether a newly formed TNC entering the market is an affiliate or subsidiary of an existing motor carrier or is a taxicab company or shuttle company converting to a TNC, pursuant to § 40-10.1-605(1)(n), C.R.S.

12. Furthermore, the proposed amendments included a requirement to notify TNCs, in writing, if/when there are increases to the annual application fee tiers. The proposed notification would be at least thirty days prior to the increases taking effect. The criteria being used to establish the different annual application fee tiers would also be published on the Commission's website.

B. Stakeholder Engagement

13. On July 10, 2023, Transportation Staff coordinated and conducted a stakeholder event to discuss potential options related to the implementation of this new framework. Those in attendance included representatives from all licensed TNCs, including Rasier LLC ("Rasier"), Lyft, Inc., HopSkipDrive, Inc, and River North Transit LLC, as well as a prospective applicant interested in the TNC market.

14. During the discussion, it was suggested that certain data points could be used to establish the different annual application fee tiers, such as ride volume, personal vehicle and driver count, and/or generated revenue. There was also discussion on prioritizing certain market factors over others, such as the size/scope of a TNC operation being given more weight than whether a TNC operation has been doing business in Colorado for a specified length of time. Consensus of the group was that establishing different tiers to measure the size/scope of a TNC operation was appropriate. The group agreed to between three and five tiers.

15. In December 2023, these same stakeholders were again contacted to discuss a model that had been created by Transportation Staff. This model consisted of the same parameters outlined in the proposed rule amendments, including having TNCs fill out a questionnaire prior to submitting a permit application, which would then be used to designate the most appropriate of three possible fee tiers. As had been previously discussed, the model would give more weight to the size/scope of the TNC operation. Stakeholders agreed with the model created by Transportation Staff.

16. This model was also incorporated as part of the administrative setting of TNC permit fees, effective January 1, 2024, which was necessary since SB 23-187 repealed the fixed fee previously set in statute and delegated to the Commission the function of administratively setting the annual permit fees.

17. This model was implemented for immediate effect, with this follow-on rulemaking to consider any adjustments or modifications, and to expand access to the TNC industry to smaller and cooperative-style operations, which is consistent with the intent of SB 23-187. This implementation has been well received by currently licensed TNCs, most of whom have already renewed their TNC permits using this new framework, as well as prospective TNC operations, some of whom have already used it to enter the market.

III. WRITTEN COMMENTS

A. Initial Comments

18. Through the NOPR, the Commission solicited comments from interested persons and stakeholders on whether to adopt, revise, or not adopt, some or all of the proposed amendments to the TNC rules, as set forth in the attachments to Decision No. C24-0215.

19. The Commission encouraged members of the transportation industry and other interested persons to participate in the Proceeding and to contribute to the rulemaking record.

20. The Commission specifically requested comment from interested participants on whether the approach contained in the proposed rules provides sufficient substance regarding the various annual application fee tiers or if the rules should further describe the resulting tiers.

21. Comments were received from two parties, Rasier and Towards Justice.

22. Rasier is a licensed TNC in Colorado that contracts with independent drivers who receive ride requests through the Rasier digital network.

23. Towards Justice is a nonprofit law firm that represents workers in litigation and other advocacy to build worker power and advance economic justice in Colorado and across the country.

B. Rasier's Comments

24. Rasier has concerns related to the questionnaire that will be used to determine the tiers that determine the annual TNC fees.

25. Rasier has concerns about the factors that will be used to determine market share, years in operation, and ownership structure.

26. Rasier advocates for market share to be determined by trip volume. Rasier believes trip volume would provide a clear and objectively defined metric that offers a useful proxy for market share. The use of this metric would avoid providing competitively sensitive information, such as vehicle count, driver count, or revenue, which competitors could use in combination with other publicly available data to gain insights into a TNC's business practices.¹

¹ Rasier LLC's Comments on Proposed TNC Rule 6702(e) and Senate Bill 23-187 Establishing Different Tiers of Permit Fees for Transportation Network Companies, p.2.

27. Rasier recommends that years in operation be given less weight as a policy matter. Rasier argues that a years-based definition could unfairly benefit a large company that is expanding to Colorado yet is able to quickly generate a significant market share. Rasier believes this result would be at odds with the intent of SB 23-187.²

28. Rasier also believes the Commission should ensure TNCs are provided sufficient notice of the criteria used to establish the different tiers of TNC annual application fees on its website.³

29. Rasier did not propose any specific changes to the proposed rules.

C. Towards Justice Comments

30. Towards Justice encourages the Commission to establish three fee tiers for TNCs within Commission rules.

31. Towards Justice advocates for the following tiers:⁴

- (1) A top permit fee tier of TNCs subject to permit fees between \$95,000 and the statutory maximum of \$111,250. This tier should apply to TNCs that control over 15 percent of the Colorado market or over 20 percent of the market in any of Colorado's three largest metropolitan areas.
- (2) A middle fee tier should reflect the dramatically reduced market share enjoyed by other TNCs that are active in our state, while ensuring that the Commission can cover costs in accordance CRS 40-10.1-606(d).
- (3) A third tier of TNCs that are subject to low or no permit fees, including those TNCs that have entered the Colorado market within the previous three years.

32. Towards Justice also requested that the Commission describe the market factors it will use to determine both which tier a particular TNC falls within, and which permit fee dollar amount a TNC shall pay within the range of permit fees defined for its tier.⁵

² *Id.*

³ *Id.*

⁴ Public Comment of Towards Justice, p. 2-3.

⁵ *Id.* at p.3.

D. Response Comments

33. There were no response comments filed in this proceeding.

IV. RULEMAKING HEARING

34. The rulemaking hearing was held, remotely, on June 20, 2024.

35. There were two public commenters at the hearing, Ms. Nina DiSalvo of Towards Justice and Mr. Okan Bekaroglu of Odin Rideshare. Comments were also made by Mr. Nathan Riley of Commission Staff to give some context to the proceeding.

36. No one from a TNC currently operating in Colorado appeared at the rulemaking hearing on June 20, 2024. The only participation in this proceeding, in any way, by a TNC operating in Colorado, was the initial comments by Rasier.

37. Ms. DiSalvo commented about the rules and the desire to have clarity for the cost for a TNC to enter the market. Ms. DiSalvo also raised concerns about the two primary TNC providers monopolizing the market in Colorado.

38. Ms. DiSalvo believes transparency in costs will encourage more TNC companies to operate in Colorado.

39. Mr. Bekaroglu currently operates a limousine company that is regulated by the Commission.

40. Mr. Bekaroglu would like to expand to include a rideshare company in the mountain areas of Colorado.

41. Mr. Riley presented a background of TNC regulation in Colorado and of SB 23-187.

V. STATUTORY AUTHORITY

42. The Commission has general statutory authority to promulgate such rules as are necessary to administer and enforce title 40, Colorado Revised Statutes, per § 40-2-108(1), C.R.S. The Commission also has authority to promulgate rules consistent with part 6, article 10.1, title 40, Colorado Revised Statutes, under §§40-10.1-606(2)(c) and §40-10.1-608(1), C.R.S., as well as SB 23-187, enacted and effective May 18, 2023.

43. As detailed in the NOPR, this Proceeding was prompted by the need to amend Commission Rules to align with numerous legislative changes made during the 2023 Colorado legislative session through SB 23-187.

VI. DISCUSSION**A. Rule 6702(e)**

44. At the outset, it is important to note the limited amount of participation by stakeholders after the proposed amendments to the TNC rules were available for review. Only one currently licensed TNC provided written comments and no TNC attended the rulemaking hearing.

45. The lack of participation from TNCs leads the undersigned Administrative Law Judge (“ALJ”) to believe that the TNCs believed that the stakeholder process prior to the issuance of the proposed rules had been successful.

46. The proposed rules mimic the provisions and requirements contained in SB 23-187.

47. The limited comments address the questionnaire that will be used to place a TNC into the appropriate fee tier, which in turn corresponds to the appropriate annual permit fee. The comments do not suggest additional rules or changes to the proposed rules. The comments appear to request that the tiers and the fee amount be included in the rules, with the belief that this will make the process more transparent.

48. The undersigned ALJ agrees with the premise that the tiers and fees should be transparent to allow prospective TNCs to know the costs associated with entering the market. However, the commenters miss a key provision in the new law.

49. The amount of the fee is to be set “administratively.” This means that, with the approval of the Executive Director of the Department of Regulatory Agencies, these fees can change without a formal rulemaking proceeding. This process makes sense considering the fees are to be set to cover the Commission’s direct and indirect costs associated with the regulation of TNCs.

50. These fees could change dramatically based upon the number of TNCs that are operating in the state at any given time. Not putting the tiers or the fees in the rules allows flexibility to quickly change these fees to avoid over or under collection. This method will also allow any TNCs to easily have the statutorily required 30-day notice of any increases to the fees.

51. In addition, the undersigned ALJ believes that the publishing of the tiers and fees on the Commission’s website provides better transparency to current and prospective TNCs. Those unfamiliar with the TNC process will have an easier time finding these fees on the website as compared to finding the rules and then navigating to the proper rule concerning TNC fees. This process is also in conformity with the requirements under § 40-10.1-606(2)(e), C.R.S.

52. This process also allows for TNCs to provide suggestions to the Commission to change or update the questionnaire, fees, or tiers. The Commission can decide to incorporate these suggestions and quickly adjust the system, as appropriate.

VII. CONCLUSION

53. The proposed rules, as provided for review on April 12, 2024, shall be adopted without any changes.

54. In adopting Rules, the ALJ has carefully considered the public comments, alongside the competing interests at stake. For all the reasons discussed, the ALJ finds that the Rules adopted by this Decision serve the public interest and are within the Commission's statutory authority.

55. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding, along with this written Recommended Decision, and recommends that the Commission enter the following order.

VIII. ORDER

A. It Is Ordered That:

1. The Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, more specifically, the Commission's Transportation Network Company Rules ("Rules"), contained in final format attached to this Recommended Decision as Attachment B, are adopted.

2. The adopted Rules, in legislative and final format (Attachments A and B to this Decision), are also available through the Commission's E-Filings system at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0165TR

3. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision will become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission, for good cause shown, permits this limit to be exceeded. Responses to exceptions are due within 14 days of service of exceptions.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director