

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15R-0250TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION
NETWORK COMPANIES, 4 CODE OF COLORADO REGULATIONS 723-6.

**DECISION ADDRESSING EXCEPTIONS TO
RECOMMENDED DECISION R15-0985;
AND AMENDING PROPOSED RULES**

Mailed Date: November 12, 2015
Adopted Date: November 4, 2015

I. BY THE COMMISSION

A. Statement

1. In this proceeding, the Colorado Public Utilities Commission (Commission) adopts rules regulating Transportation Network Companies (TNCs)¹ in Colorado, pursuant to §§ 40-10.1-601 to -608, C.R.S. The purpose of these rules is to preserve the health, safety, and welfare of Coloradans and visitors to our state who use TNC services.

2. This Decision grants, in part, and denies, in part, exceptions to Recommended Decision No. R15-0985, filed by Rasier, LLC. On our own motion, we also edit several rules for consistency.

B. Background

3. On April 30, 2015, we issued a Notice of Proposed Rulemaking for Rules 6701-6724 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.²

¹ A TNC "uses a digital network to connect riders to drivers for the purpose of providing transportation." § 40-10.1-602(3), C.R.S.

² Decision No. C15-0407, in Proceeding No. 15R-0250TR.

4. We referred this proceeding to an Administrative Law Judge (ALJ).³ Interested participants filed comments, including two TNCs: Rasier, LLC (Uber) and Lyft, Inc. (Lyft), the five Denver taxi companies,⁴ and Staff of the Public Utilities Commission (Staff).⁵ ALJ G. Harris Adams conducted hearings on June 1, 2015, and August 12, 2015. Participants filed additional comments and statements of positions.

5. On September 11, 2015, the ALJ issued a Recommended Decision adopting rules.⁶ The adopted rules are largely based on a consensus proposal by Staff, Uber, and Lyft.⁷ The taxi companies had expressed concerns with the consensus rules through their oral and written comments, and the ALJ addressed these concerns in his Recommended Decision.

6. On October 1, 2015, Uber filed exceptions. No participants filed responses to the exceptions.

C. Findings and Conclusions

1. Rule 6713(d): TNC Driver Medical History and Examination Reports

7. Proposed Rule 6713 requires TNCs to ensure that drivers pass a medical examination before logging onto the TNC's digital network. This rule is authorized by § 40-10.1-605(1)(d)(IV), C.R.S., which requires TNCs to obtain proof that drivers are medically fit to drive. Rule 6713(d) requires a medical examiner that is going to issue a TNC medical examiner's certificate to complete the TNC medical examination report. These forms will be

³ *Id.* ¶ 14 (referring for an initial Commission Decision); Decision No. C15-0757-I, issued July 27, 2015, in Proceeding No. 15R-0250TR, ¶ 4 (referring for a Recommended Decision).

⁴ MKBS, LLC d/b/a Metro Taxi, Colorado Cab Company, LLC d/b/a Denver Yellow Cab, Union Taxi Cooperative, and Freedom Cabs, Inc.

⁵ Comments were also filed by Cowen Enterprises, the Colorado Bureau of Investigation, and the United States Hispanic Chamber of Commerce.

⁶ Decision No. R15-0985, in Proceeding No. 15R-0250TR (Recommended Decision).

⁷ See Stipulated Rules Submission Letter and Proposed Consensus Rules filed by Staff on July 31, 2015, in Proceeding No. 15R-0250TR.

available on the Commission's website.⁸ If the driver passes the medical examination, the medical examiner must certify that the examination was conducted in accordance with the Commission's rules when the medical examiner issues the TNC medical examiner's certificate to the driver.

8. Uber asserts that Rule 6713(d) could be read to require TNCs to maintain a driver's medical records: "[W]hen read in close proximity to a TNC's obligation to maintain copies of driver medical certification cards, the references to 'packet' could be read more broadly to require a TNC to keep copies of a TNC driver's *actual medical records* in addition to the medical certification card."⁹

9. Uber requests the following underlined additions to Rule 6713(d):

A TNC must maintain copies of medical certification cards for all TNC drivers that are authorized to access its digital platform. All medical examiners issuing driver medical certification cards shall use the TNC Driver Certification form included in a packet available on the Commission website. Such driver medical certification card shall include certification that the medical provider conducted an examination in accordance with these rules, and with knowledge of the driving duties, finds the individual is qualified, subject to any express conditions. Such packet shall also include an examination report that identifies the driver, describes the driver's medical history, and documents the examination including the doctor's independent judgment based thereupon. A TNC shall not be required to maintain a copy of a driver's medical examination report.

10. We grant Uber's exception to Rule 6713(d). Although none of the rules require TNCs to maintain a copy of drivers' medical records, Uber's proposed changes clarify the documents that TNCs must keep on file to demonstrate proof medical fitness.

⁸ Rule 6713(d) states:

All medical examiners issuing driver medical certification cards shall use the TNC Driver Certification form included in a packet available on the Commission website. Such driver medical certification card shall include certification that the medical provider conducted an examination in accordance with these rules, and with knowledge of the driving duties, finds the individual is qualified, subject to any express conditions. Such packet shall also include an examination report that identifies the driver, describes the driver's medical history, and documents the examination including the doctor's independent judgment based thereupon.

⁹ Limited Exceptions of Rasier, LLC, filed October 1, 2015, at 5. (emphasis supplied in original).

11. We also, on our own motion, make additional changes to Rule 6713(d) to clarify the names of the documents contained in the medical fitness packet on the Commission's website, which are used to prove the TNC drivers' medical fitness. The "TNC medical examination report" describes the examination that must be performed, and the "TNC medical examiner's certificate" is the document that must be kept on file with the TNC and in the driver's vehicle.

12. Rule 6713(d) shall state:

A TNC must maintain copies of TNC medical examiner's certificates for all TNC drivers that are authorized to access its digital platform. All medical examiners issuing TNC driver medical examiner's certificates on cards shall use the TNC Driver medical examination report Certification form included in a packet available on the Commission website. Such TNC driver medical examiner's certificate on card shall include certification that the medical provider-examiner conducted an examination in accordance with these rules, and with knowledge of the driving duties, finds the individual is qualified, subject to any express conditions. Such TNC Driver medical examination report shall packet shall also include an examination report that identifies the driver, describes the driver's medical history, and documents the examination including the doctor's medical examiner's independent judgment based thereupon. A TNC shall not be required to maintain a copy of a driver's TNC medical examination report.

13. We also revise Rules 6708(b), 6710(c)(VI), 6713(b) and (e), and 6716(a) to use the term *medical examiner's certificate*, instead of *medical certification card* or *medical certificate*. Designation of the document as a *medical examiner's certificate* is consistent with the name of the certificate signed by medical examiners under 49 C.F.R. § 391.41 and under these rules.

2. Rules 6723(l) and 6710(e): Disclosure of Personal Information of Users of TNC Services

14. Uber also objects to Proposed Rules 6723(l) and 6710(e), which require TNCs to obtain consent from their customers before disclosing any personally identifiable information and to keep records of any disclosure. The requirement for consent comes from § 40-10.1-605(1)(m), C.R.S., which states:

(I) A transportation network company shall not disclose to a third party any personally identifiable information concerning a user of the transportation network company's digital network unless:

(A) The transportation network company obtains the user's consent to disclose personally identifiable information;

(B) Disclosure is necessary to comply with a legal obligation; or

(C) Disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

15. Rule 6723(l) restates the statutory prohibition against disclosure of personally identifiable information concerning users of TNC services:

No TNC shall disclose to a third party any personally identifiable information concerning a user of the transportation network company's digital network unless:

(I) the transportation network company obtains the user's consent to disclose personally identifiable information;

(II) disclosure is necessary to comply with a legal obligation (including compliance with Commission rules); or

(III) disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

16. Uber requests that the Commission modify Rule 6723(l) to allow TNCs to comply with § 40-10.1-605(1)(m) by displaying a privacy policy online informing customers that the TNC plans to disclose their personal information to third parties. Uber argues that posting a

“publicly disclosed privacy policy [that] specifically sets forth the range of uses and disclosures” of its users’ personally identifiable information constitutes consent to disclose their users’ personally identifiable information to third parties.¹⁰

17. Uber proposes the following underlined additions to Rule 6723(l):

(l) No TNC shall disclose to a third party any personally identifiable information concerning a user of the transportation network company’s digital network except pursuant to the publically disclosed terms of the TNC’s privacy policy unless:

(I) the transportation network company obtains the user's consent to disclose personally identifiable information;

(II) disclosure is necessary to comply with a legal obligation (including compliance with Commission rules); or

(III) disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

18. Uber also objects to the record retention policy in Rule 6710(e), which requires TNCs to maintain records of any disclosures of personally identifiable information and the reason it was disclosed. Proposed Rule 6710(e) states:

A TNC shall maintain the following data for any personally identifiable information disclosed concerning a user of the transportation network company’s digital network for a minimum of one year:

(I) the information disclosed;

(II) to whom the information was disclosed;

(III) the user’s consent to disclose the disclosed information, if applicable;

(IV) the legal obligation necessitating disclosure, if applicable; and

(V) documentation of the facts and circumstances necessitating disclosure to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions, if applicable.

¹⁰ *Id.* at 3.

19. Uber argues that this record retention policy goes beyond the statutory requirements and is overly burdensome. According to Uber, personally identifiable information concerning users of TNC services does not require the same degree of privacy or protection as, for example, the sensitive and confidential information contained in a medical record. Uber asserts: “If adopted, the proposed rule [6710(e)] would be the first U.S. state or federal requirement to place such strict and inflexible recordkeeping requirements regarding common personally identifiable information. Nowhere does the TNC Act require this heightened level of protection.”¹¹

20. Uber requests that the Commission make the following underlined additions to Rule 6710(e):

A TNC shall maintain records demonstrating compliance with the disclosure prohibitions in Section 6723(l). For purposes of Section 6723(l)(I), the consent requirement may be satisfied through a publically accessible privacy policy that plainly describes and permits the disclosure.

Uber suggests deleting the rest of the rule, including the requirement that TNCs maintain data about any disclosures of its users’ personally identifiable information and the reasons for disclosure under § 40-10.1-605(1)(m).

21. We deny Uber’s exceptions to Rules 6723(l) and 6710(e). Consent from a TNC user cannot be obtained by a privacy policy. Consent requires agreement, approval, or permission.¹²

22. Uber’s proposed changes to Rule 6723(l) would equate a “public-facing privacy policy” with consent to disclose personally identifiable information. This would negate the plain language of § 40-10.1-605(1)(m). The statute enumerates three permissible reasons to disclose

¹¹ *Id.*

¹² See *Corder v. Folds*, 2012 COA 174, ¶ 16.

personally identifiable information concerning users of TNC services: consent, legal obligation, or defending or investigating issues related to user terms and conditions. These reflect the sole circumstances under which the General Assembly intended to allow disclosure of personally identifiable information.

23. We also deny Uber's proposed changes to Rule 6710(e) because they are contrary to the intent of § 40-10.1-605(1)(m). The General Assembly added this section to an otherwise lenient, deregulated structure of providing public transportation, thus signifying the sensitivity and importance of maintaining protections for personally identifiable information. Maintaining records of disclosures under Rule 6710(e) is necessary for Commission enforcement staff to determine if a TNC has violated Rule 6723(l) and § 40-10.1-605(1)(m). Additionally, all consent agreements can be maintained electronically, so compliance with 6710(e) will not be overly burdensome.

II. ORDER

A. The Commission Orders That:

1. Limited Exceptions of Rasier, LLC, filed on October 1, 2015, are granted, in part, and denied, in part, consistent with discussion above.

2. Rules 6701-6724 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, in redline and strikeout format attached to this Decision as Attachment A, and in final format attached as Attachment B, are adopted and are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=15R-0250TR.

3. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 4, 2015.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

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Commissioners