

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0116TNC

IN THE MATTER OF THE PETITION OF LYFT, INC., FOR EMERGENCY RELIEF
WITHOUT NOTICE AND HEARING AND AN IMMEDIATE TEMPORARY WAIVER OF
CERTAIN RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR
723-6, IN RESPONSE TO THE CORONAVIRUS COVID-19 IN COLORADO.

**COMMISSION DECISION: (1) DENYING PETITION
FOR RULE WAIVER, WITHOUT PREJUDICE;
AND (2) DENYING MOTION TO INTERVENE**

Mailed Date: April 3, 2020
Adopted Date: April 1, 2020

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission denies the petition filed by Lyft, Inc. (Lyft) on March 20, 2020 (Petition), requesting a temporary waiver of certain provisions within the Commission's Transportation Network Company Rules, 4 *Code of Colorado Regulations* (CCR)

723-6-6700 through 6724 (TNC Rules). The Commission also denies the motion filed by Rasier, LLC (Rasier) requesting permission to intervene in this Proceeding.

B. Petition for Rule Waiver

2. Through its Petition, Lyft requests a temporary waiver of the following provisions of the Commission's TNC Rules:

Rule	Requested Waiver
Rule 6708(a)	If a driver's license or medical certificate expires between March 10, 2020 and May 10, 2020, a current driver will not be disqualified and will have an extension of time to provide updated documentation through May 10, 2020
Rule 6708(b)	If a driver's license, medical certificate, or vehicle registration expires between March 10, 2020 and May 10, 2020, a current driver will not be disqualified and will have an extension of time to provide updated documentation through May 10, 2020
Rule 6713(e)	If a medical certificate expires between March 10, 2020 and May 10, 2020, a current driver will not be disqualified as operating as a driver and will have an extension of time to provide updated documentation through May 10, 2020
Rule 6714	Suspend all vehicle inspections between March 10, 2020 and May 10, 2020; any expiration of a vehicle inspection report during that time shall not disqualify a driver
Rule 6716(a)	If a driver has an expired medical certificate, driver's license, or vehicle inspection between March 10, 2020 and May 10, 2020, a current driver will not be disqualified
Rule 6723(k)	If a driver has an expired vehicle inspection certificate between March 10, 2020 and May 10, 2020, a current driver will not be disqualified

3. Lyft states that its drivers are facing "insurmountable" challenges in complying with these rules due to COVID-19. Lyft explains its drivers: cannot obtain physical examinations due to medical office closures and triage; cannot obtain vehicle registration and driver's license documents from government offices due to required closures of public buildings and social

distancing; and cannot obtain vehicle inspections due to closures by businesses and service providers and social distancing. Lyft states the requested rule waivers will advance social distancing efforts to protect the health, safety, and welfare of its drivers and partners because drivers will not be required to visit their doctors or government offices. Lyft contends these unprecedented and unforeseen considerations of hardship and equity provide the “good cause” for the rule waiver required by Rule 4 CCR 723-1-1003(a) of the Commission’s Rules of Practice and Procedure.

4. Lyft states that it requests these rule waivers from March 10, 2020, the date Governor Polis declared a COVID-19 state of disaster emergency, through May 10, 2020, with an opportunity for Lyft to request further extension if warranted.

5. Lyft specifies the requested rule waivers would only apply to drivers currently operating on the Lyft platform.

C. Responses

6. By Decision No. C20-0199-I, issued March 25, 2020, the Commission established a shortened period through March 30, 2020, for notices, interventions, and responses to the Petition. Both of the other TNCs operating in Colorado made filings responding to the Petition.

7. On March 27, 2020, HopSkipDrive filed comments supporting the requested rule waivers and requested that any waiver be extended to all TNCs operating in Colorado. HopSkipDrive also requested that the Commission extend the medical assessment expiration date beyond the date specified in Lyft’s Petition.

8. On March 30, 2020, Rasier filed a motion requesting permission to intervene in this Proceeding. Rasier states that, like Lyft, it is helping to facilitate vital transportation services while other methods of transportation may be unavailable or impracticable during the uncertain

times of COVID-19. Rasier states that it seeks to intervene to obtain the same temporary waiver of Rules 4 CCR 723-6-6708(a), 6708(b), 6713(e), 6714, 6716(a), and 6723(k) with the clarification that Rasier believes a waiver of civil enforcement or potential penalties associated with these rules is warranted to the extent the Commission determines some of the requirements in the Petition are non-waivable statutory requirements. Rasier states that waiving enforcement or potential associated penalties for these rules would effectuate the intent of the Petition.

9. Rasier states it has a pecuniary interest in ensuring that any rule waiver be provided to all TNCs operating in Colorado on identical terms and for an identical period of time to “avoid disparate treatment” since all TNCs are “facing the same realities” of the COVID-19 outbreak.¹ Rasier claims it should be readily apparent that if one TNC is granted a rule waiver, not due to circumstances specific to that TNC, but due to exigent circumstances that will similarly impact all TNCs, then a blanket waiver should be provided “as a matter of fundamental fairness.”²

D. Findings and Conclusions

10. Pursuant to Rule 4 CCR 723-1-1003(a) of the Commission’s Rules of Practice and Procedure, the Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements in Commission decisions.

11. We have both legal and policy concerns with Lyft’s request for a temporary waiver of these provisions of our TNC rules.

12. First, as legal matter, waiving our rules would not affect application of the underlying statutes. Section 40-10.1-605(1)(d), C.R.S., expressly requires that a TNC confirm a

¹ Rasier Motion at ¶¶ 4 and 6.

² *Id.* at ¶ 10.

driver has a valid driver's license, proof of vehicle registration, and proof of medical fitness; and § 40-10.1-605(1)(g), C.R.S., requires vehicle safety inspections. Lyft does not attempt to address in its Petition how the requested rule waivers would affect the underlying statutory requirements that the rules implement. As Rasier suggests in its motion to intervene, the implication may be that Lyft requests the rule waivers so that Enforcement Staff of the Commission's Transportation section (Staff) refrains from enforcement actions during the waiver period. However, we have significant legal and policy concerns with the concept of requiring our Staff to not enforce statutory requirements.

13. Moreover, the bases and reasoning in the Petition fail to provide sufficient grounds to waive these rules, even if we could find a legal path to do so. The rules Lyft seeks to waive provide significant protective measures for passengers of TNCs regarding driver qualification and vehicle safety. Although we are in unprecedented circumstances, this is an extraordinary request with significant implications for public safety. Lyft argues that it is helping to facilitate vital transportation services while other methods of transportation may be impacted during these uncertain times. But it did not provide any data regarding its operations (such as percentage of drivers affected) to support the need for this extraordinary request. Further, Lyft does not explain why this specific segment of its drivers (with expired documentation) is essential to its operations, especially considering the diminished ridership due to the current statewide stay-at-home orders. The Denver Department of Public Health & Environment Stay-At-Home Order, issued March 23, 2020, and the Colorado Department of Public Health & Environment Stay-At-Home Order 20-24, issued March 27, 2020, classify taxis, TNCs, and other transportation providers as essential businesses *if they are providing transportation necessary for essential activities*. Without adequate explanation or support from Lyft regarding why the limited

segment of drivers that would become disqualified during the waiver period is needed to meet demand for transport to essential activities during this period, the Commission lacks the information it needs to weigh the public safety risk of allowing these drivers to continue to operate against the unmet demand for transportation.

14. Because of these significant concerns and record deficiencies, we do not find good cause to grant the requested rule waivers. Therefore, we deny the Petition. However, because we agree that transport to essential activities during this time of crisis is an important concern, we will deny the Petition without prejudice. This is intended to signal to Lyft that it may file a new petition for rule waiver if the coming weeks bring evidence of a critical need for this segment of its drivers to continue to operate and Lyft has a proposal for how to resolve the conflict between a waiver of our rules and the underlying statutory requirements.

15. Pursuant to Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure, a motion to permissively intervene must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant and show that the movant's interests would not otherwise be adequately represented.

16. Consistent with our determination to deny Lyft's Petition, we deny Rasier's motion to intervene in this Proceeding. Rasier's concern that it must intervene in order to ensure any rule waiver granted to one TNC is extended to others on the same terms is mooted by both our denial of the Petition and our rationale therefor. Aside from legal concerns, we deny the Petition because we find we must weigh the public safety risk of allowing otherwise disqualified drivers to continue to operate against the unmet demand for transport to essential activities. This analysis is necessarily company-by-company and is not simply a blanket waiver for all TNCs because of exigent circumstances impacting all TNCs. As we explained in denying the Petition

without prejudice, Rasier can file a new petition for rule waiver to apply to its drivers if it believes it has evidence of a critical need for this segment of its drivers to continue to operate in order to provide transport to essential services and Rasier has a viable solution for resolving the conflict between a rule waiver and the underlying statutory requirements.

II. ORDER

A. The Commission Orders That:

1. The petition filed by Lyft, Inc. on March 20, 2020, requesting a temporary waiver of certain provisions within the Commission's Transportation Network Company Rules, 4 *Code of Colorado Regulations* 723-6-6700 through 6724, is denied without prejudice, consistent with the discussion above.

2. The motion to intervene filed by Rasier, LLC on March 30, 2020, is denied, consistent with the discussion above.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 1, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners