

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0459TNC

IN THE MATTER OF THE PETITION OF HOPSKIPDRIVE, INC FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

**COMMISSION DECISION DENYING PETITION FOR
RULE WAIVER**

Mailed Date: December 9, 2020
Adopted Date: December 9, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission denies the petition filed by HopSkipDrive, Inc. (HopSkipDrive or Company) on October 29, 2020, requesting a one-time waiver of the annual permit fee requirement in Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6702(b)(II) of the Commission's Rules Regulating Transportation by Motor Vehicle. The Commission finds the annual permit fee is required by statute, § 40-10.1-606(2), C.R.S., and therefore cannot be waived through the procedures to request waiver of a Commission rule.

B. Petition for Rule Waiver

2. On October 29, 2020, HopSkipDrive filed a petition with the Commission requesting a one-time waiver of the fee requirement in Rule 4 CCR 723-6-6702(b)(II) of the Commission's Rules Regulating Transportation by Motor Vehicle.

3. Rule 6702(b)(II) specifies that, to obtain a Transportation Network Company (TNC) permit, a person must "pay the annual application fee."

4. This rule implements § 40-10.1-606(2), C.R.S., which provides:

The commission shall issue a permit to each transportation network company that meets the requirements of this part 6 and pays an annual permit fee of one hundred eleven thousand two hundred fifty dollars to the commission. The commission may adjust the annual permit fee by rule to cover the commission's direct and indirect costs associated with implementing this part 6.

5. Rule 4 CCR 723-1-1003 allows that the Commission may, for good cause shown, grant waivers from specific Commission rules. This Rule specifies the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

6. In the Petition, HopSkipDrive states that it is a licensed TNC operating in Colorado since 2018. The Company states it offers door-to-door transportation for youth riders, arranged by parents, school districts, and county foster agencies. It states its transportation services are a critical solution for school districts and county foster agencies, which have federal requirements to offer personalized transportation for students with disabilities, students experiencing homelessness, and students in foster care. The Company states it also serves as a resource for seniors and other individuals in need of extra care. It states seniors and public agencies supporting aging and disabled individuals arrange transportation through HopSkipDrive so that these individuals can access food, appointments, or other errands. It states these services have become even more critical during the COVID-19 pandemic as access to these resources for vulnerable populations is limited. The Company states it operates in a niche market and, as a result, its ride volume is less than the volume of the other two TNCs operating in Colorado, which serve the general public. Finally, the Company states it allows for a safe and flexible opportunity for drivers with prior caregiving experience, allowing them to work around regular school hours as opposed to driving adults at night. It states drivers for its platform are predominantly women with other

caregiving responsibilities. It states, for these care providers, the flexibility to work around their schedule is a critical resource while at-home caregiving needs have expanded during the pandemic.

7. To support its request for a rule waiver, HopSkipDrive states its operations have been impacted by the COVID-19 pandemic. The Company states its projected 2020 ride volume has decreased. The Company states, even compared to its 2019 ride volume, when it was a new entrant to the market, 2020 ride volume is down by 30 percent. HopSkipDrive states it also expects a decrease to 2021 ride volume, currently predicting a 35 percent decrease to prior projections. The Company notes it has already undergone staff layoffs to continue its operations. HopSkipDrive adds that it has faced increased operation costs because of the pandemic including implementing plastic dividers and the use of other personal protective equipment during rides, and technology investments to include attestations that riders are not ill. The Company states that it pays the same \$111,250 annual permit fee as the other two TNCs operating in the state, despite its lower ride volume and lower volume of enforcement issues. The Company states it has never faced any serious enforcement actions from the Commission and no actions related to safety.

8. The Company urges the Commission to interpret § 40-10.1-606(2), C.R.S., to require the Commission to issue a permit to any TNC that pays the annual permit fee, but not to require the Commission to charge an annual permit fee. The Company argues the statute instead *authorizes* the Commission to charge an annual permit fee. The Company posits that the Commission charges the fee through rule, and therefore, the Commission has the ability to waive the fee for a particular TNC for good cause shown.

C. Responses

9. No interventions or responses were filed. Three public comments were received from the Donnell-Kay Foundation in Denver; Ms. Theresa Anderson of Littleton; and Mr. Luke

Ragland of Denver, on behalf of Ready Colorado, a coalition advocating for better schools and more parental empowerment in education. The public comments support the Petition.

D. Findings and Conclusions

10. The Commission finds this is an instance where a specific statute controls. Thus, the Commission will interpret and apply the plain language of the statute.

11. Section 40-10.1-606(2), C.R.S., states the Commission shall issue a permit to each TNC that: (1) meets the statutory operational and financial requirements; and (2) pays an annual permit fee of \$111,250. The statute authorizes the Commission to adjust the annual permit fee by rule to cover the Commission's direct and indirect costs associated with implementing the TNC statutes.

12. Contrary to the arguments in the Petition, the plain language of this statute requires payment of the annual permit fee as a requirement to obtain the TNC permit. The Commission may, through rulemaking, adjust the annual permit fee amount to cover the Commission's direct and indirect costs associated with implementing the TNC statutes. At this time, the annual permit fee remains at the \$111,250 set by statute.

13. The Commission finds no support in the plain language of the statute or the Commission's implementing Rule 6702 that would allow the Commission to waive the annual permit fee for a particular TNC by finding good cause to waive Rule 6702(b)(II). We find that payment of the annual permit fee to cover the Commission's direct and indirect costs associated with implementing the TNC statutes is required by statute. The Commission's rules implement this statutory requirement. We will therefore deny the Petition.

II. ORDER**A. It Is Ordered That:**

1. The petition of HopSkipDrive, Inc. filed on October 29, 2020, requesting a one-time waiver of the annual permit fee requirement in Rule 4 *Code of Colorado Regulations* 723-6-6702(b)(II) of the Commission's Rules Regulating Transportation by Motor Vehicle, is denied.

2. The 20-day time period provided pursuant to § 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.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 9, 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