

Decision No. R22-0727-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22R-0402TR

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IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S  
TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO  
REGULATIONS 723-6, IMPLEMENTING HOUSE BILL 22-1089 AND SENATE BILL 22-  
144 AND ESTABLISHING ADDITIONAL INSURANCE, TRAINING, OPERATIONAL, AND  
REPORTING REQUIREMENTS FOR TRANSPORTATION NETWORK COMPANIES.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
IDENTIFYING ITEMS FOR PUBLIC COMMENT,  
ESTABLISHING DEADLINES, AND SCHEDULING  
CONTINUED PUBLIC COMMENT HEARING**

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Mailed Date: November 15, 2022

**I. STATEMENT AND BACKGROUND**

**A. Statement and Summary**

1. This Decision identifies topics for additional public comment; establishes deadlines to file comments; schedules a continued remote public comment hearing for January 4, 2023; and establishes procedures for the remote public comment hearing. This Decision also provides information explaining how to observe the hearing without participating in it; provides information on how to submit written public comment and oral public comment outside the scheduled hearing; and clarifies that the hearing will continue until all those appearing have provided public comment, but no later than 5:30 p.m.

**B. Procedural History<sup>1</sup>**

2. The Colorado Public Utilities Commission (Commission) initiated this matter by issuing a Notice of Proposed Rulemaking (NOPR) (Decision No. C22-0554), to consider amendments 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.

3. In the NOPR, the Commission identified specific issues for public comment; referred this matter to an Administrative Law Judge (ALJ) for disposition; established deadlines for initial and responsive public comments; and scheduled a fully remote public comment hearing for November 10, 2022 at 9:00 a.m. until no later than 5:00 p.m.<sup>2</sup> With the NOPR, the Commission published proposed rule changes as Attachments A and B.

4. Since the Commission issued the NOPR, numerous public comments have been filed.

5. The ALJ held the public comment hearing as noticed on November 10, 2022 at 9:00 a.m., during which the ALJ received numerous public comments. During the hearing, the ALJ explained that she would be issuing a written decision identifying specific items for the Colorado Department of Education (CDE) to provide public comment; establish a deadline for CDE's comments and a deadline for comments responding to CDE's comments; and that the November 10, 2022 public comment hearing is continued to January 4, 2023 from 11:30 a.m. to 5:30 p.m.

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

<sup>2</sup> Decision No. C22-0554 at 15.

6. In addition, during the hearing, Public Utilities Commission Staff (Staff) stated that it would file the proposed Form U referenced in proposed Rule 6706(c). After the hearing, Staff filed the referenced Form U.

## **II. SPECIFIC AREAS FOR PUBLIC COMMENT AND NEED FOR ADDITIONAL PUBLIC COMMENT HEARING**

7. Although the Commission coordinated with CDE when drafting the proposed rules, the ALJ finds that additional coordination with CDE is needed. Indeed, public comments raise concerns with numerous aspects of the proposed rules, but the record lacks information as to CDE's position on such concerns. The three primary areas that comments have focused on involve proposed rule requirements: for drivers to obtain a medical certification per the United States Department of Transportation's certification requirements (proposed Rule 6724(e)); for annual vehicle inspections performed by an Automotive Service Excellence (ASE) certified mechanic (proposed Rule 6724(f)); and safety and security reporting requirements (hereinafter reporting requirements) (proposed Rule 6724(k)). Given CDE's expertise and role in Colorado's public education system, the ALJ finds that the Commission would benefit from hearing CDE's position on these issues (among others).

8. The ALJ invites CDE to provide written public comment responding to positions and proposed rule changes in the Initial Comments of HopSkipDrive, Inc. (HopSkipDrive) filed on October 13, 2022 and the attachments thereto (particularly proposed rule changes in Attachment B) and HopSkipDrive's Response Comments filed on October 27, 2022.<sup>3</sup>

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<sup>3</sup> For the most part, HopSkipDrive's public comments are representative of many concerns expressed by other public comments, including concerns relating to the three issues identified in ¶ 7 above. As such, the ALJ does not ask CDE to respond to other specific public comments, though CDE is welcome to do so as it deems appropriate.

9. To the extent not already addressed, the ALJ also invites CDE to provide written public comments as to how the Commission should define “safety or security incidents” that trigger the reporting requirements contemplated under § 40-10.1-609(1), C.R.S., and proposed Rule 6724(k), including the timing and frequency of the proposed reporting requirements. Likewise, the ALJ invites CDE to submit written public comments on privacy concerns<sup>4</sup> expressed in public comments as to proposed Rule 6724(k)’s reporting requirements. As a part of that, CDE is invited to comment on whether proposed Rule 6724(k)’s reporting requirements may conflict with or run contrary to the spirit and intent of the Federal Educational Rights and Privacy Act (FERPA), found at 20 U.S.C. § 1232g, and related regulations, 34 CFR Part 99. CDE is also invited to comment on whether the referenced reporting requirements could be modified to protect student privacy, and if so, proposed rule language that can accomplish this.

10. CDE’s comments on the identified issues must be filed on or by December 6, 2022.

11. Anyone wishing to respond to CDE’s comments on the above issues, or any other matter relevant to the proposed rules (including the Form U filed on November 10, 2022) must submit such comments on or by December 20, 2022.

12. As discussed during the November 10, 2022 hearing, HopSkipDrive is encouraged to file public comments that include data on its average historic driver turnover rate.

13. Given the above issues, as noted during the November 10, 2022 hearing, the ALJ continued that hearing to January 4, 2023 at 11:30 a.m. This will allow the Commission to receive additional public comment after CDE and interested persons submit additional written

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<sup>4</sup> See e.g., Adams 14’s Public Comments Filed on October 13, 2022; Englewood Schools’ Supervisor of Transportation Public Comments filed on October 10, 2022.

public comment as discussed above. The January 4, 2023 public comment hearing will be a fully remote hearing.<sup>5</sup>

### **III. METHODS TO SUBMIT PUBLIC COMMENT**

14. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

15. Interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Anyone using the latter option should ensure that their comments include this Proceeding number.

16. Oral comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at (303) 869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

17. The Commission will equally consider public comments, regardless of the format in which they are submitted (verbal or in writing).

### **IV. OBSERVING OR PARTICIPATING IN PUBLIC COMMENT HEARING**

#### **A. Observing the Public Comment Hearing**

18. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing and need not join the

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<sup>5</sup> The ALJ will evaluate whether to allow for in-person participation as the hearing date nears. If the ALJ determines this is appropriate under the existing COVID-19 circumstances, the ALJ will issue a separate decision before the hearing. Regardless, interested persons will still be given the option to appear remotely.

hearing by telephone or video-conference. To observe the hearing by webcast, enter this link in the web browser <https://puc.colorado.gov/webcasts> and select the audio or video option for the assigned hearing room. The assigned hearing room will be identified on the Commission's public calendar for the date and time of the hearing, at the following link: <https://puc.colorado.gov/pucalendar>.

19. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing and may assist in the orderly progression of the hearing.

#### **B. Participating in the Public Comment Hearing**

20. The public comment hearing will begin at 11:30 a.m. on January 4, 2023, and conclude no later than 5:30 p.m. This means that, consistent with Commission practice, the public comment hearing will continue until all verbal public comments are received, but will end no later than 5:30 p.m. The hearing will not be held open for public comments after all those who have appeared have provided public comment, even if this means concluding the hearing well before 5:30 p.m. For example, if all those who appear at the hearing have provided public comment by 12:00 p.m. or sooner, the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after the 11:30 a.m. start time assumes the risk that the hearing will be concluded before they join.

21. The public comment hearing will be held using the web-hosted video-conferencing service, Zoom. This means that members of the public who wish to participate in the public comment hearing should not appear in person at the Commission's offices but should instead appear remotely via Zoom. Participants in the hearing should prepare in advance to use this platform. Attachment A to this Decision provides step-by-step technical

instructions and requirements to participate by video-conference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that video-conference participants carefully review and follow all requirements in this Decision and Attachment A.

22. For those who wish to provide oral comments during the hearing, video-conference participation is preferred and encouraged because it allows for the hearing to be held in a manner most similar to in-person hearings. Nevertheless, interested persons have the option to participate by telephone. The link, access code, and call-in information to participate in the hearing will be available on the Commission's calendar of events for the date and time of the hearing at <https://puc.colorado.gov/pucalendar>.

23. Any member of the public participating in the public comment hearing by video-conference must use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera. Participants are required to input their full name when prompted to do so. This will allow the ALJ to call on participants to provide oral comments in an orderly fashion.

24. During the public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; and (c) not connect to the hearing using multiple devices located in the same room (which will cause audio feedback). Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak.

**V. ORDER**

**A. It Is Ordered That:**

1. Consistent with the above discussion, the November 10, 2022 public comment hearing is continued as follows:

DATE: January 4, 2023

TIME: 11:30 a.m., continuing until concluded, but not later than 5:30 p.m.

PLACE: By video conference or telephone using the Zoom web conferencing platform at a link in the Commission's calendar of events available at <https://puc.colorado.gov/puccalendar>.

2. All participants in the public comment hearing must follow the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

3. **Deadlines for Public Comments.** The Colorado Department of Education's (CDE) public comment on the items identified in this Decision must be filed on or by the close of business on December 6, 2022. Comments responding to CDE's comments or public comments on any other relevant matter must be filed on or by the close of business on December 20, 2022.

4. Those wishing to observe but not participate in the above public comment hearing may do so by observing the Commission's webcast for the assigned hearing room at: <https://puc.colorado.gov/webcasts>.

5. Members of the public who wish to provide written or oral comments outside of the public comment hearing may do so by following the instructions in this Decision.

6. The Administrative Law Judge may schedule additional hearings if necessary.

7. This Decision is effective immediately.

( S E A L )



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director