

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0009TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

**DECISION ADDRESSING EXCEPTIONS AND
MODIFICATIONS UPON COMMISSION MOTION**

Mailed Date: October 10, 2013
Adopted Date: September 17, 2013

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of exceptions to Decision No. R13-0943 (Recommended Decision) filed by Uber Technologies, Inc. (Uber) on August 22, 2013. Colorado Cab Company, LLC (Colorado Cab); Hy Mountain Transportation, Inc., Snow Limousine, Inc., Ramblin' Express, and Estes Valley Transport, Inc. (collectively Hy Mountain); White Dove Limousine, Inc.; Hermes Worldwide, Inc.; and International Association of Transportation Regulators (IATR) timely filed responses to the exceptions. In addition, the Office of Legal Counsel, on behalf of the Governor, and other interested participants filed comments on aspects of the Recommended Decision. Being fully advised in this matter and consistent with the discussion below, we address the exceptions and comments, as well as modify the recommended rules on our own motion.

B. Procedural Background

2. On January 11, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR), to describe the manner of regulation over transportation utilities, enhance public safety, protect consumers, serve the public interest, and make the rules more effective and efficient. Decision No. C13-0054, at 3.

3. The Commission referred this matter to Administrative Law Judge (ALJ) G. Harris Adams. The ALJ held public hearings on March 11, 2013, and April 16, 2013. The ALJ issued the Recommended Decision and recommended rules on August 2, 2013.

4. By Decision No. C13-1092-I, mailed September 4, 2013, the Commission entered into the record email communications between the ALJ and employees of the California Public Utilities Commission, as well as a link to a proposed decision of the California Commission. We permitted comments responding to these documents on or before September 11, 2013.

These actions addressed Uber's contention under § 24-4-103(8.1)(c), C.R.S., that not all information considered by the Commission was in the record and that participants did not have the opportunity to respond to this information. Uber and Colorado Cab timely filed comments.

5. The exceptions, comments, and responses to exceptions address only the recommended rules governing luxury limousine providers. We adopt the recommended rules governing other regulated transportation carriers, subject to modifications discussed below and as stated in the revised rules.

C. Request for Oral Argument

6. Uber requests that the Commission hear oral argument regarding its exceptions. We find that the written submissions sufficiently advise us to arrive at a just and reasonable decision in this matter; therefore, we deny Uber's request.

D. Interested Participant Positions

7. Uber contends that the proposed rules do not comply with procedural requirements under Colorado's Administrative Procedure Act (APA), § 24-4-101, C.R.S., *et seq.*¹ These alleged infirmities include failures to: include communications between the ALJ and employees of the California Commission in the record; provide participants the opportunity to address these communications; evaluate rules addressing any scientific or technological issues; and, notify members of the legislature of any proposed penalty increases. Uber also argues that the recommended rules impermissibly prohibit the use of price estimates and restrict the methods by which limousines may calculate its charges. Uber also challenges the rules limiting where a luxury limousine may be positioned and when it may arrive before a service is provided.²

¹ Exceptions filed by Uber on August 22, 2013, pp. 8-9; Comments filed by Uber on September 11, 2013, p. 5.

² *Id.*, pp. 23-25.

In response, Colorado Cab and other participants argue that the recommended rules are required to protect consumers and to comply with the statutory distinctions between luxury limousine and taxicab services.³ These participants conclude the Commission's processes substantially comply with the APA's procedural requirements and urge the Commission to adopt the rules as recommended.

8. The Office of the Governor commented that consumers are protected sufficiently if luxury limousine carriers are permitted to quote a reasonable estimate of charges and that the state should not regulate the basis for calculating rates. It urges the Commission to adopt rules so that both taxicab and luxury limousine carriers can be successful, while ensuring a level playing field that embraces technological change. Other interested participants commented on the recommended rules applicable to luxury limousine carriers, some urging the Commission to adopt the rules, and others arguing that the rules are not in the public interest.

E. Luxury Limousine Rules

9. To operate under the reduced regulatory structure granted luxury limousine service under the Public Utilities Law, a provider must meet the definitions stated in § 40-10.1-301, C.R.S. "Luxury limousine service" is a "specialized, luxurious transportation service provided on a prearranged, charter basis." The statutes do not define "prearranged." "Charter basis" is defined as follows:

"Charter basis" means on the basis of a *contract* for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.⁴

³ Response to exceptions filed by Colorado Cab on September 5, 2013, p. 6;

⁴ § 40-10.1-301(1), C.R.S. (emphasis added).

A luxury limousine service “does not include taxicab service,”⁵ which is defined as follows:

"Taxicab service" means passenger transportation in a taxicab *on a call-and-demand basis*, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.⁶

10. We modify the recommended luxury limousine rules to preserve public safety and consumer protection and to promote innovative and efficient methods of providing service. Because Uber’s exceptions requests maintain the current rules⁷ and do not propose rule revisions or provide a statutory analysis supporting rule revisions, the Commission proceeds on its own motion to modify the recommended rules.⁸

1. Rule 6301(f) – Definition of “prearranged charter basis”

11. Recommended Rule 6301(f) focuses upon the meaning of “prearranged,” and says:

“Prearranged charter basis” means that the charter order for luxury limousine service requested for a chartering party is entered into prior to the luxury limousine carrier being at or near the point of departure and before any charge for ancillary services.

The Recommended Decision says that “[p]rearrangement provides an important consumer protection so that customers understand and agree to the arranged service prior to it being rendered”⁹ and that it “will promote competition and protect consumers.”¹⁰

⁵ § 40-10.1-301(8), C.R.S.

⁶ § 40-10.1-101(19), C.R.S. (emphasis added).

⁷ See, for example, Uber Exceptions, at 28. The Commission denies Uber’s exceptions to the extent they request only maintaining the pre-existing rules.

⁸ See § 40-6-109(2), C.R.S.

⁹ Recommended Decision, at ¶ 38 (addressing recommended Rule 6308).

¹⁰ *Id.*, at ¶ 39 (addressing recommended Rule 6309).

Uber objects to this recommended definition on the grounds of vagueness, not necessarily for policy reasons.¹¹

12. We modify Rule 6301(f) to allow use of innovative methods of communication between luxury limousine providers and customers. “Prearranged” addresses the point in time by which the parties must enter into a “charter order.” By defining “prearranged” to require the completion of a charter order “prior to the luxury limousine carrier being at or near the point of departure,” the recommended rule may restrict the use of new technologies and communications that allow for completion of a contract after the carrier is at or near the point of departure. Modifying this definition to “prior to provision of the service” complies with the statutory term “prearranged” and promotes innovative means of communication and formation of contracts. We agree with the ALJ’s recitation of policy interests at issue here, but we conclude that our modified definition promotes competition and innovation without impairing consumer protection. Therefore, we modify and clarify¹² Rule 6301(f) as follows:

“Prearranged” means that the charter order for luxury limousine service is entered into prior to provision of the service.

2. Rules 6301(b) and 6308(b) -- Charter Order and Pricing Terms

13. Luxury limousines furnish services pursuant to a “charter order,” which is a “contract for transportation” that provides a chartering party exclusive use of the vehicle for a specific period of time.¹³ During that period, the chartering party has the exclusive right to direct operation of vehicle, including origin, destination, route, and intermediate stops.¹⁴

¹¹ See Uber Exceptions, at pp. 22-23.

¹² We also clarify that we are defining “prearranged” and not intruding upon the definition of “charter order.”

¹³ § 40-10.1-301(1), C.R.S.

¹⁴ *Id.*

The ALJ recommended further definition of “charter order” that includes a requirement to list the “total charge” for the service. Recommended Rule 6308(b) also addresses pricing methodology, by precluding a device “for calculating any component of rates based upon time and mileage, other than a clock.”

a. Definiteness of price terms

14. We examine whether a “contract for transportation” under § 40-10.1-301(1), C.R.S., and the public interest mandate a definite, total charge, as compared to allowing estimates or criteria upon which the ultimate fare will be calculated. The Recommended Decision favors a definite charge, stating that:

- “Inclusion of price in the charter order is a particularly important protection because rates are not regulated. There is no independent means or basis for anyone to determine the total price for a charter.”¹⁵
- “Service cannot be fully prearranged for a specific period of time if charges are not determined prior to the passenger entering the vehicle. While many hypothetical examples are possible, customers cannot necessarily know prearranged charges based upon metered contingencies – a characteristic unique to taxi service.”¹⁶

15. Participants supporting the recommended rules and a definite, total charge argue that, for the service to be “prearranged,” the total charge must be known by the passenger in advance, and including the total charge protects consumers from unknown and excessive fares.¹⁷ Uber objects, asserting that its current practice of estimating the charge should not be prohibited.

¹⁵ Recommended Decision, at ¶ 49.

¹⁶ *Id.*, at ¶ 50.

¹⁷ See Response by Colorado Cab Company, LLC, et al., at 11, 16.

16. Colorado common law and its consumer protection laws, the Uniform Commercial Code, and the Public Utilities Law demonstrate that a reasonable estimate complies with the requisites for formation of a valid contract. Further, the statutory term “prearranged” addresses a point in time when the parties must enter into a contract for transportation, not the definiteness of contract terms.¹⁸

17. Participants and commenters advocate that consumer protection is a prominent policy interest, and we agree. Another important policy interest is removing unnecessary impediments to formation of contracts and allowing the market to function efficiently. We balance the policies of consumer protection and promoting unimpaired formation of contracts to permit the use of a method or specific criteria for calculating a charge method or a reasonable estimate of the charge. We also allow reasonable estimates of a fare, upon the conditions that the estimate is made in good faith and incorporates the reasonable expectations of the parties.¹⁹ To promote consumer protection and prevent abusive practices, we do not approve the application of criteria for the ultimate calculation of a fare that a passenger would not know, understand, or expect reasonably under the circumstances when the parties entered into the contract.

¹⁸ *New York Life Ins. Co. v. K N Energy, Inc.*, 80 F.3d 405, 409 (10th Cir. 1996); *Shreck v. T&C Sanderson Farms, Inc.*, 37 P.3d 510, 513 (Colo. App. 2001); Restatement (Second) of Contracts, § 33 (1981); Section 6-22-103, C.R.S.; Section 6-16-104.6, C.R.S.; Section 4-2-305, C.R.S.; Section 4-2-305(2), C.R.S.; Section 4-1-201(19), C.R.S., and Official Comment 19; Official Comment 3 to § 4-2-305; and Section 40-10.1-505, C.R.S.

¹⁹ Standards of honesty in fact and reasonable commercial conduct apply to the use of methods, formulas, and estimates. For example, a licensed limousine service should expect that certain times of day, holidays, and special occasions and events in Colorado result in longer drive times and thus should not be able to increase materially an estimated fare due to reasonably anticipated traffic. As another example, an estimated fare should account for certain holidays and events that increase the demand and thus price for limousine services.

18. The relative ease of market entry for luxury limousine services also enables competition to serve as a mechanism for consumer protection: if a carrier overcharges, then competitors are available as alternative providers. Therefore, we modify recommended rule 6301(b) to say, in part:

A charter order shall state the charge method or a reasonable estimate of the charge.

b. Factors to calculate fares

19. An issue related to the use of methods and estimates is the type of factors or criteria a carrier may use to calculate a fare. There appears to be no dispute that, before a ride is provided, any number of factors, which may include time, distance, traffic conditions, holidays, demand for services, amenities, and the like, may be used to negotiate or quote a fare. We agree.

20. The issue in dispute is whether luxury limousine services may use a formula or method that applies actual or measured time and distance, as well as other factors, to calculate the ultimate charge or is precluded from use of a device “for calculating any component of rates based upon time and mileage, other than a clock.”

21. The Public Utilities Law does not preclude the use of criteria such as distance to calculate a limousine fare. The definition for “charter order” makes time a necessary component, but is silent as to other criteria that may be applied. Indicative of the non-comprehensive nature of this section’s listing of necessary terms is that it does not include price, which clearly is an essential term to a contract for luxury limousine services.

22. The statutes distinguish taxicabs by whether they provide service on a call-and-demand basis, which does not raise issues of fare calculation through measured distances. Though advocates for Rule 6308 cite metering as a characteristic distinctive of taxicabs, the transportation statutes do not mention meters or metering by taxicabs or any other transportation provider.

23. Allowing the use of distance when parties enter into a “contract for transportation” conforms to common business sense. For example, a luxury limousine service, or any form of transportation service, that provides a ride from Colorado Springs to the central mountains of Colorado over a three-hour span incurs higher costs than three-hour use of a vehicle to visit multiple locations in downtown Colorado Springs.

24. The same policies applied above to whether a fare may be calculated as a formula or an estimate support the use of criteria such as actual or measured distance to calculate the ultimate fare. Provided the limousine service and the customer have a reasonable, good faith understanding of the method by which the fare will be calculated, consumers are protected sufficiently. We agree that the state should not regulate the basis for calculating a fare, and restricting the criteria or formula for calculating the fare would inhibit formation of transportation contracts unnecessarily. Therefore, we do not adopt recommended Rule 6308(b).

c. Information contained in a charter order

25. Recommended Rule 6301(b) would require the following information contained within a charter order: the name and telephone number of the carrier, the name and telephone number of the other party to the contract underlying the charter, date and time of the original arrangement, the name of at least one member of the chartering party, pickup time, pickup address, stated destination, drop off time, and the total charge for the specific period of time.

26. To authorize use of innovative technologies of communication, we clarify the definition of a “charter order” to allow electronic documentation in addition to paper.

27. We agree with the ALJ that charter orders must contain the name of the carrier. A valid contract requires identification of the parties.²⁰ Consumer protection interests also necessitate clear identification of the carrier and the driver. For example, consumers must be able to contact the carrier or driver promptly to retrieve essential items left in the vehicle.²¹ Including the carrier’s and driver’s names also allows consumers to report unsafe practices to the Commission or law enforcement. Further, to assist reports and investigations of illegal or unsafe practices, charter orders must contain the PUC permit number (LL number) of the luxury limousine carrier. We find these modifications necessary for consumer protection and safety.

28. We therefore adopt the following rule, removing some items from the recommended rule as unnecessary:

(b) “Charter order” means a paper or electronic document that memorializes the contract for luxury limousine or off-road scenic charter service for a specific period of time reasonably calculated to fulfill the purpose of the contract. A charter order shall state the charge method or a reasonable estimate of the charge. A charter order also shall contain the name and telephone number of the person contracting on behalf of the passengers; the name and telephone number of at least one passenger; the name, telephone number, and PUC number of the carrier and, if different from the carrier, of the driver; pickup time, and pickup location. A copy of the charter order shall be maintained for at least one year following the provision of service.²²

²⁰ The carrier’s and driver’s name must be sufficient to identify the provider. For example, the use of only first names would not be compliant.

²¹ To ensure that passengers have the driver’s name and telephone number, we modify Rule 6309(h) accordingly.

²² We also modify recommended Rule 6309(h) to clarify that at least one passenger in the limousine has been provided with the carrier’s and driver’s name and telephone number, to address the situation in which a person other than the passengers has contracted for the luxury limousine service.

3. Rule 6309 – Staging Areas

29. Recommended Rule 6309 would add restaurants and bars as places from where luxury limousines may not be positioned within certain distances, and would increase the measured distance from 100 to 200 feet outside the County of Denver. Recommended Rule 6309 also specifies that a luxury limousine carrier shall not arrive at a pickup location more than forty-five minutes prior to the pickup time on the charter order. In doing so, the ALJ amended a previous requirement that a luxury limousine carrier may arrive at a pickup location within a “reasonable period” of the pickup time noted on the charter order. Uber argues that these recommended rules are not necessary for consumer protection or safety and instead will make luxury limousines less available or inconvenient in town centers.²³ Colorado Cab and other responding participants contend that the recommended rules are necessary to maintain the statutory distinction between luxury limousines and taxicabs.²⁴

30. The existing limitations on where luxury limousine carriers can position their vehicles and on arrival times play an important role in maintaining the statutory distinction between luxury limousines and call-and-demand taxis.²⁵ As the ALJ noted, positioning a limousine in areas commonly used to hail taxicabs, such as in front or near a hotel or a taxicab stand, indicates the offering and provisioning of a call-and-demand service. Likewise, the arrival of a limousine far in advance of a scheduled departure evidences the offering of a call-and-demand service prior to providing the chartered, limousine service.²⁶ Therefore, to the extent Uber argues that the Commission lacks the statutory authority to promulgate staging limitations, we disagree.

²³ Exceptions filed by Uber, pp. 23-25.

²⁴ Response to exceptions filed by Hy Mountain, p. 2; Response filed by Colorado Cab, pp. 12-13.

²⁵ See §§ 40-10.1-101(19) and 40-10.1-301(8), C.R.S.

²⁶ Recommended Decision, ¶¶ 55-57.

31. The rules we adopt maintain the distinction between call-and-demand services without impairing unnecessarily the provisioning of luxury limousine service. The Commission declines to allow the addition of bars and restaurants to measure limousine positioning. Not only would adding bars and restaurants eliminate entire blocks and sections of downtowns or shopping areas, but also it fails to account for offices, businesses, and residences that are located in the same building as, or very near to, such establishments. Increasing the distances from 100 to 200 feet outside of Denver also unnecessarily restricts the provisioning of limousine services and is not required to distinguish call-and-demand from luxury limousine services.

32. Further, we find that rules governing where luxury limousines may be positioned should work in tandem with limitations on arrival times, not independently. Under the recommended rules, a luxury limousine may not arrive more than forty-five minutes before a scheduled departure, even if the location is outside areas where call-and-demand services are commonly requested. Combining the two limitations will maintain the statutory distinction between luxury limousines and taxicabs without interfering unnecessarily with a luxury limousine providing service in the 100-foot area of a hotel, motel, or taxicab stand.

Therefore, we combine recommended Rules 6309(e), (f), and (g) into a single rule as follows:

- (e) A luxury limousine carrier shall not station a luxury limousine in front of or across the street from a hotel or motel, or within one hundred feet of a recognized taxicab stand or a designated passenger pickup point at an airport without the completed charter order in the vehicle. The stationing of the luxury limousine shall be within forty-five minutes pickup time noted on the charter order.

4. Rules 6311(b) and 6611(b)

33. Because increases to civil penalty amounts are not necessary to protect the public interest at this time, we do not adopt any of the proposed increases to existing rules listed in the recommended Rules.

F. Miscellaneous Rules

34. We amend proposed Rule 6001(ee) to clarify that a person qualifying as a motor carrier is not a transportation broker.

“Transportation broker means a person, other than a motor carrier or as part of a motor carrier’s operations, who, for compensation, arranges, or offers to arrange, for-hire transportation of passengers. A transportation broker is not an agent of a motor carrier, cannot represent itself as a motor carrier, cannot provide or offer to provide transportation service, and cannot be a party to the contract for transportation.

35. We amend Rule 6016(b) to correct a typographical error.

36. We amend recommended Rule 6257(c) to clarify that a taxicab carrier shall not charge live meter rates for trips from Denver International Airport (DIA) to one of the zones listed in Rule 6257(d). For these trips, the taxicab carrier must charge the flat zone charges listed in Rule 6257(c) with the exception of any additional airport access fees and additional passenger drop charges. We also amend proposed Rule 6257(c) to correct a typographical error.

37. Finally, we delete Rule 6503(b), regarding issuance of towing permits to carriers whose principals have disqualifying convictions. This rule duplicates Rule 6504, which pertains to criminal history record checks.

G. Procedural Matters

38. Finally, we find that this rulemaking is in substantial compliance with the Colorado APA.²⁷ The additional comments permitted under Decision No. C13-1092-I provide an opportunity for any interested participant to address the communications between the ALJ and employees of the California Commission. Our rules do not address any scientific or technological issues but instead are technologically neutral while allowing use of innovative methods of service. Even if the rules as adopted address scientific or technological issues, the record and this Decision contain sufficient evaluations of the rationales justifying the rules. Third, because we are not adopting any of the recommended increases to civil penalty amounts, the statute governing notifications to members of the legislature is not applicable.

II. ORDER**A. The Commission Orders That:**

1. The exceptions filed on August 22, 2013, by Uber Technologies, Inc., are granted in part and denied in part, consistent with the discussion above.

2. The 20-day period stated in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

3. The adopted rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and in final format (Attachment B) 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=13R-0009TR.

4. This Order is effective upon its Mailed Date.

²⁷ See § 24-4-103(8.2)(a), C.R.S.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
September 17, 2013**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners