

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0737TR

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IN THE MATTER OF THE TEMPORARY RULES IMPLEMENTING SENATE BILL 14-125  
CONCERNING THE REGULATION OF TRANSPORTATION NETWORK COMPANIES.

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**DECISION ON APPLICATION FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION**

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Mailed Date: August 26, 2014

Adopted Date: August 13, 2014

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**I. BY THE COMMISSION**

**A. Statement**

1. This Decision considers applications for rehearing, reargument, or reconsideration (RRR) of Decision No. C14-0773 (Decision), filed by Uber Technologies, Inc. (Uber) on July 28,

2014, and Lyft, Inc. (Lyft) on July 28, 2014. We grant, in part, and deny, in part, the applications for RRR consistent with the discussion below.

**B. Procedural Background**

2. On June 5, 2014, Senate Bill 14-125 (SB 125) was signed into law, which created a new Part 6 within Article 10.1 of Title 40 C.R.S. The legislation defined and authorized companies that use a digital network to connect riders and drivers, known as Transportation Network Companies (TNCs), to operate in Colorado. The legislation declared TNCs “to be affected with the public interest” and “subject to regulation to the extent provided in part 6 of this article [10.1].”

3. To implement SB 125, the Public Utilities Commission (Commission or PUC) found it imperatively necessary to adopt temporary rules under § 24-4-103(6), C.R.S. The temporary rules enable TNCs to operate in Colorado and establish public safety standards, thus furthering critical public policy interests underlying the legislation. The temporary rules were effective from the mailed date of the Decision until permanent rules become effective or for 210 days, whichever period is less.

4. The temporary rules: (1) implement an application and permit process authorized in § 40-10.1-606(1), C.R.S.; (2) clarify proof of insurance and financial responsibility requirements, as applicable under §§ 40-10.1-604(2) and (4), C.R.S.; (3) clarify the length of time a driver is not permitted to resume service after the 12 consecutive hour period pursuant to § 40-10.1-605(1)(e), C.R.S.; (4) clarify the requirement that drivers be medically fit to drive consistent with § 40-10.1-605(1)(d)(IV), C.R.S.; and (5) clarifying safety inspection requirements, as applicable pursuant to § 40-10.1-605(1)(g)(I), C.R.S.

5. Many of these rules are patterned after Commission rules regulating motor carriers, which incorporate federal transportation standards in an effort to “provide practical and clear standards to drivers, transportation providers, and Commission Staff.”<sup>1</sup>

**C. Applications for Rehearing, Reargument, or Reconsideration**

6. Uber and Lyft each filed for RRR on July 28, 2014. These applications address five topics in the temporary rules for Commission consideration, and suggest revision or clarification regarding: (1) authorized insurers; (2) hours of service; (3) medical fitness standards; (4) vehicle inspections; and (5) incorporation of applicable federal standards.

**1. Rule 6702(a) – Authorized Insurers**

7. Uber requests that the Commission clarify the financial responsibility rule to include eligible non-admitted insurers permitted pursuant to § 10-5-108, C.R.S., and allowed by § 40-10.1-604(4), C.R.S., within the scope of insurers “authorized to do business in the state.” Without clarification, Uber states the rule could arguably not allow for certain insurers to file proof of surplus lines insurance with the Commission.<sup>2</sup>

8. We grant Uber’s request to clarify that surplus lines insurers authorized under Article 5 of Title 10 are within the meaning of an “insurer that is authorized to do business in this state” in Rule 6702(a) of the Commission’s Rules Regulating Transportation by Motor Vehicle 4 *Code of Colorado Regulations* (CCR) 723-6.

**2. Rule 6703(b) - Hours of Service**

9. Lyft objects to Rule 6703(b)(II), which requires a driver to log out of service for at least 8 consecutive hours after having been logged into the TNC’s digital network for 80 hours

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<sup>1</sup> See Decision No. C14-0773, ¶ 7(c).

<sup>2</sup> See, Uber RRR, at 9-11.

in any 8 consecutive days, and to Rule 6703(b)(III), which requires time records be kept by the TNC.<sup>3</sup> Lyft argues that Rules 6703(b)(II) and (III) are not authorized by the plain language of the statute which addresses hours of service only as follows under § 40-10.1-605(1)(e), C.R.S.: “A driver shall not offer or provide [TNC] services for more than twelve consecutive hours.”

10. Uber challenges Rule 6703(b)(I), which sets an eight-hour rest period “at the end of the twelfth hour after logging in to the TNC’s digital network.” Uber requests modification of this rule to include “cumulative” language, which it argues would promote consistency with the 12 consecutive hour requirement in § 40-10.1-605(1)(e), C.R.S. Uber claims that the rule supplants the statutory consecutive hour limitation by beginning the 12-hour period any time a driver logs in to the TNC network, though a driver may not work several hours during those 12 hours.<sup>4</sup> Uber also proposes an amendment that restarts the computation of the 12-hour period with each calendar day:

At the end of the twelfth cumulative hour after logging in to the TNC's digital network for the first time in a calendar day, a driver shall not drive for any TNC or motor carrier and shall be logged out of any TNC's digital network for eight consecutive hours.<sup>5</sup>

11. We deny Lyft’s and Uber’s applications to revise or eliminate Rules 6703(b)(I), (II), and (III). SB 125 does not restrict the PUC’s rulemaking authority over TNC driver hours to only the enforcement of the prohibition upon drivers offering or providing TNC services for more than 12 consecutive hours. SB 125 expressly authorizes the Commission to “promulgate rules *consistent with* this part 6, including rules concerning administration, fees, and safety requirements.” § 40-10.1-605(e), C.R.S. (emphasis added). Uber cites this language, but does

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<sup>3</sup> See, Lyft RRR, at 4-5

<sup>4</sup> See, Uber RRR, at 7-9

<sup>5</sup> *Id.*, at 9.

not provide further analysis of its meaning. “Consistent” is defined as “having agreement with itself or something else; accordant; harmonious; congruous; compatible; compliant; not contradictory.” *Black’s Law Dictionary* 308 (6th ed. 1990).<sup>6</sup>

12. The Commission’s temporary rules setting a rest period of 8 hours after a driver works for 12 hours or for 80 hours over an 8-day period do not conflict with a prohibition upon a driver working more than 12 consecutive hours. The Commission also draws from the Colorado Legislature’s emphasis upon the need for the PUC to protect the safety of the public in the provisioning of TNC services. The temporary rules set clear standards for driver safety that parallel Commission and federal driver-hour standards pending the completion of a permanent rulemaking. Further, these temporary rules do not conflict with the overall legislative intent of the TNC statute to preclude Commission regulation of TNC rates, terms, and conditions of service but authorize Commission oversight of public safety.

13. We also deny Uber’s request to amend the rules to allow restarting of the 12-hour period with each calendar day. Uber’s proposal would allow a driver to work more than 12 consecutive hours in contradiction of § 40-10.1-605(e), C.R.S., if a driver continues working past midnight after working several consecutive hours.

### **3. Rule 6703(c) – Medical Fitness**

14. Temporary Rule 6703(c) incorporates federal standards requiring a TNC driver undergo specific medical examinations by a certified medical examiner. Lyft claims this rule is

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<sup>6</sup> See also *Dworsky v. Canal St. Ltd. P’ship*, 269 B.R. 375, 382 (8th Cir. 2001) (“Consistent is defined as ‘coexisting and showing no noteworthy opposing, conflicting, inharmonious, or contradictory qualities or trends’ or ‘jointly assertable so as to be true or not contradictory.’”) (quoting *Webster’s Third New International Dictionary* 484 (1976)) (ruling that a local rule authorizing the court to rule on an application to reopen a bankruptcy case without a hearing was not in conflict with, and thus not inconsistent with, the Federal Bankruptcy Rules.); and, *Ryan v. Roach Drug Co.*, 239 P. 912, 914 (Okla. 1925) (“Consistent means not contradictory.”).

“inconsistent with the TNC statute, ” which requires the TNC only to “confirm” that the driver possesses proof the person is medically fit to drive. Lyft argues that these rules “impose substantial obligations on TNC drivers” and proposes the Commission revise this rule to require only “self-attestation” on a form designated by the Commission.<sup>7</sup>

15. A TNC driver’s medical fitness and ability to drive is of great importance to passenger safety. Not only may the Commission “promulgate rules consistent with this part 6, including rules concerning ... safety requirements,” but also the statute requires “pursuant to Commission rules, proof that a person is medically fit to drive. § 40-10.1-605(1)(d)(IV), C.R.S. We find that these requirements are in the interests of public safety, are not onerous, and provide guidance to the standard of “proof” necessary to comply with the statute. We deny Lyft’s request to replace the medical fitness standards set forth in the temporary rules with a “self-attestation.”

#### **4. Rule 6703(d) – Vehicle Inspections**

16. In contrast to the temporary rules’ incorporation of federal standards governing vehicle inspections, Lyft proposes TNC-specific vehicle standards consistent with Title 42 of the Colorado Revised Statutes. It also proposes, for those components not addressed in Title 42, that a confirmation that the component is present on the vehicle and “functioning properly” is acceptable.<sup>8</sup> Uber proposes standards similar to Lyft’s proposal be adopted, or in the alternative, the Commission clarify that it is not requiring any safety standards for vehicle equipment beyond the 19 points in the statute.<sup>9</sup>

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<sup>7</sup> See, Lyft RRR, at 5-7.

<sup>8</sup> Lyft RRR, at 3.

<sup>9</sup> Uber RRR, at 5-7

17. We grant Uber’s request for clarification. The federal regulations incorporated by reference for vehicle inspection pursuant to Rule 6703(d) correspond with the 19 items listed in § 40-10.1-605(1)(g)(I), C.R.S. Attachment A to this Decision cites those corresponding rules, which will promote the interest of providing “practical and clear standards to drivers, transportation providers, and Commission Staff.”<sup>10</sup>

18. We therefore deny the requests to incorporate the state standards in Title 42, because they are not comprehensive and do not correspond with the 19 statutory items for consideration. The federal standards are comprehensive, which is among the reasons the Commission incorporated them in the temporary rules.

19. In addition, Lyft requests clarification that September 1, 2014 is the effective date for the vehicle inspection requirements. We agree that there is good cause to grant this clarification; the Commission requirements and standards for vehicle inspection set forth in temporary rules shall be effective September 1, 2014.

#### **5. Rule 6703(a) – Federal Motor Carrier Safety Regulations**

20. Lyft and Uber argue that the Commission should eliminate Rule 6703(a), which incorporates by reference the Federal Motor Carrier Safety Regulations published in 49 *Code of Federal Regulations* (C.F.R.) Parts 391, 393, and 396, as revised October 1, 2010. The applicants claim that the rule is unclear as to which federal requirements are “applicable,” and that many of the federal driver requirements go beyond the requirements in the TNC statute.

21. We deny the request to eliminate the reference to the federal regulations. The existing language in Rule 6703(a) resolves Lyft’s and Uber’s concerns, because the rule incorporates the federal regulations “[t]o the extent they are *applicable to the statutory*

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<sup>10</sup> See Decision No. C14-0773, ¶ 7(c).

*requirements* set forth in § 40-10.1-605(1) and (2).” (Emphasis supplied) The rule thus excludes federal regulations not relevant to the provisioning of TNC services pursuant to SB 125. The Commission incorporates by reference those federal regulations, including 49 C.F.R. Parts 391, 393, and 396, as revised on October 1, 2010, that apply to the types of vehicles used by TNCs.<sup>11</sup>

22. Consistent with our discussion above, for clarity we specify which specific Federal Safety Regulations are “applicable” to the governance of TNC operations for purposes of these temporary rules as enumerated in Attachment A: (a) the proof of medical fitness are governed by 49 C.F.R. Parts 391.41, 391.43, and 391.45; and (b) standards for inspections are listed in 49 C.F.R. Parts 393 and 396.

23. Further, we reiterate that these rules are temporary rules as authorized in § 24-4-103(6), C.R.S., which the Commission found imperatively necessary to comply the new laws enacted in Part 6 within Article 10.1 of Title 40 C.R.S., and protect public health, safety, and welfare. The subsequent permanent rulemaking will address whether additional or alternative standards should be adopted; for these temporary rules, the federal regulations provide tested standards on requirements necessary for TNCs to operate safely before permanent rules are adopted.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The applications for rehearing, reargument, or reconsideration of Decision No. C14-0773, filed by Uber Technologies, Inc. on July 28, 2014 and Lyft, Inc. on July 28, 2014 are granted, in part, and denied, in part, consistent with the above discussion.

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<sup>11</sup> Rule 6102(a), 4 CCR 723-6.

2. Specific federal regulations incorporated by reference for these adopted temporary rules are enumerated in Attachment A to this Decision.

3. The adopted temporary rules are available through the Commission's Electronic Filings system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=14R-0737TR](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=14R-0737TR).<sup>12</sup>

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  
August 13, 2014.**

(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

GLENN A. VAAD

Commissioners

<sup>12</sup> The original link to Proceeding No. 13R-0009TR is corrected by Errata Notice C14-1032-E to link to this Proceeding No. 14R-0373TR in E-Filings.