

**NEVADA TRANSPORTATION AUTHORITY**

**Docket 15-06024, LCB File No. R029-15**

**REGULATION AND LICENSING OF TRANSPORTATION NETWORK COMPANIES**

**Written public comment received through 3pm on July 22, 2015**

<b><u>Bates Stamp Page(s)</u></b>	<b><u>Submitting Party</u></b>
1-2	"asjdja"
3	Childress
4	Denton
5	Edelman
6-9	Gordon- Yellow Checker Star (ONE)
10-111	Gordon- Yellow Checker Star (TWO)
112-170	Kay- Lyft
171-173	Kirk
174-175	Lee
176-177	Mihaere
178	Pechonis
179	Reyna
180-184	Rushton- Livery Operators Association
185	Shranko- Yellow Checker Star
186-187	Tomlinson

**From:** AS [mailto:asjdja@gmail.com]  
**Sent:** Tuesday, July 21, 2015 1:37 PM  
**To:** JIM DAY  
**Subject:** UBER / LYFT SUGGESTIONS FOR THEIR REGULATION

I have been a full time Uber driver myself in other states. Below is my opinion from my experience and my suggestions. Hope they can help.

I think the best course of action regarding the identification of the vehicle for Uber/Lyft drivers would be to use a magnetic sign on the roof of the vehicle, or something that could be set up and removed as needed from the inside of the windshield of the car. Also, letters should be more than 2 inches in size to be easily recognizable by riders at a distance. A lot of people do not have 20-20 vision.

The background checks conducted by the ride sharing companies is enough. It is conducted by a third party company with experience in this matter. In years of operation, rape and assault cases by Uber drivers have been very rare statistically speaking. The star system in the app is very effective in keeping drivers under check in all regards. Anything bad that you do is stupid since you will be caught right away. The ride sharing companies have enough information about you to catch you right away.

Application fees should not be charged, as that would stop many potential drivers from getting registered with Uber/Lyft if they don't have the money at hand.

Drug tests is an innecessary waste of money. Leave that money for better purposes.

The Uber system controls itself in a very efficient manner. So far, there have been very few impersonator incidents

and if riders use common sense, there is no reason for that to happen at all to begin with.

Regulators, please study the experience of other states where Uber has been operating for years. There's nothing new to invent. Please don't add too many conditions as this will increase the costs of operation and will make it more difficult for these companies to settle down in Nevada and compete successfully.

Be practical and rule with moral integrity. The 3 percent ride tax is a good amount of money that will go to the state. Give these companies a break to settle in our state and get up and running.

Just my two cents...

--

THE ORACLE AT DELPHI  
EL ORACULO DE DELFOS

*"Make your own nature, not the advice of others, your guide in life"*

*"Haz tu propia naturaleza, no el consejo de otros, tu guía en la vida"*

**From:** Eyv Childress [mailto:mobilesbyeyv@gmail.com]  
**Sent:** Friday, July 17, 2015 5:21 PM  
**To:** JIM DAY  
**Subject:** reduced application fees for special needs transporters .

Dear Mr. Day,

I would like to say thank you for taking your valuable time in addressing my request regarding the reduced application fees for my line of work that services the underserved people that will now be able to utilize APP based transportation.

As a former special ed substitute teacher in Texas, I became aware of the need for transportation services that were not available. In addition, I became a CDL driver and specialized in that type of transportation in California. My former husband was also a disabled veteran and my step daughter is in a wheelchair, so I'm very well aware about how difficult it is to transport people with disabilities and therefore the cost of doing business is much greater to equip your vehicles acquiring trained individuals higher insurance costs etc.

I have relocated to Nevada in hopes of creating a business dedicated to this segment of the population and I have included some statistics for you since I know your time is valuable. I hope you will consider making the application requirements less stringent on individuals like me and hopefully the fees will be under \$500 for the application then I will also be able to apply and sustain costly start up expenses here in the state of Nevada. I believe in giving to the community and as I have stated before if you ever need any assistance on a voluntary capacity please do not hesitate to call me I would so much like to be of assistance in any capacity.

Sincerely,  
Eyv D Childress  
702-561-6410

**From:** Stephen Denton [mailto:jumpitrsa@gmail.com]  
**Sent:** Monday, July 20, 2015 9:40 AM  
**To:** JIM DAY  
**Subject:** New regulation.

Maybe someone should make it illegal for cab drivers or limo operators to do both. Reason being I have driven a cab before and being it is already a 12 hour day the drivers that think they can make it rich. For those drivers u need to show them they will need to make a choice

From: Stephanie Edelman [mailto:stephanagle@aol.com]  
Sent: Monday, July 20, 2015 9:52 AM  
To: JIM DAY  
Subject: Regulation and Licensing of Transportation Network Companies

I have been a taxi driver for 19 years and have been active with the United Steelworkers and the Nevada Taxi Authority for many years.

You have such a huge undertaking in writing these regulations!

I just wanted to further comment on some of the items that were discussed at last Thursday's workshop.

It is my opinion that many future TNC drivers do not fully understand what it is really all about. It was mentioned that some drivers are buying black cars/sedans because they see that as an upgraded service. They don't realize that this is in areas where the TNC has contracted with licensed carriers to provide this service. Future drivers view the TNC opportunity as a way to own their own business and not have to work for a cab company. I don't think there is a complete understanding of tax implications, health insurance and many other things. And maybe the TNC's don't realize how many people want this to be a full time job.

What makes the Las Vegas area different from almost every area in the country is that drivers of taxis and limos cannot own their own vehicles. I believe this is why we have the regulations that we do. And this is why on our Uber app we won't see UberTaxi, UberSuv, etc. like you would in other areas.

I have been reading blogs from Uber drivers in other areas and I hear the same things that I hear from cab drivers here. They check to see where the ride is going and if it's not long enough they don't take it. What I think was more interesting was the number of drivers that will only work during "surge pricing". They say they can't make enough money otherwise.

And in regard to the number of passengers in a vehicle I would think that Uber has it as part of the app to ask how many people and only assign that call to a vehicle that can handle a larger number of passengers.

Will the seat belt regulations that apply to taxis apply to Uber rides? People do not need to use car seats in a taxi (so wrong in my opinion!) but in my private vehicle they do. Will drivers be exempt from this if they are on an Uber ride? Again we go back to safety.

It has become more difficult over the last year or so for taxi drivers to pass the DOT physical. I don't know what is required for a medical card in the limo business but I do know drivers that feel that if they can't pass the physical then they will driver for Uber. We always talk about the riding public whether it's providing services or safety. That is why I think that all drivers need to meet the same standard.

My only other comment is in regard to the availability of records from the TNCs. They operate in a whole different world than we do. Everything is in the clouds! I don't believe there is even a physical location you could go to fill out a job application! Maybe they don't even have a filing cabinet in their offices. I think it is unfair to ask them to change how they do business in this regard. They will just have to point us to the right cloud!

Stephanie Edelman  
FRIAS Driver/TA 19473

Sent from my iPad

Good afternoon, Jim: On behalf of Yellow Checker Star Transportation, and following the suggestion of the NTA, I'm attaching additional recommendations for TNC regulations. I believe these are recommendations that have not yet been considered. These are taken in part from New York City's Taxi and Limousine Commission TNC regulations.

I hope you find these helpful. Thank you for your efforts in achieving a new regulatory structure for TNCs that comports with the recent TNC legislation and provides the necessary implementation.

If we can be of assistance in any way, please do not hesitate to contact me.

Marc C. Gordon

General Counsel

Yellow Checker Star Transportation

Attn: Legal Department

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## **SUMMARY CHECKLIST OF ADDITIONAL RECOMMENDED TNC REGULATIONS**

### **SUBMITTED BY YELLOW CHECKER STAR**

## **BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

### **\*This language is based in part on New York City Taxi and Limousine Commission Proposed Regulations**

- Regulation of TNC rates and surge pricing (prohibition or cap), to satisfy legislative purpose of providing “cost effective TNC services”;
- TNC must file with NTA all contact information (telephone numbers, websites, smartphone applications, email addresses, customer service telephone number and/or email address);
- TNC must file a Rate Schedule with the NTA. Must include price multipliers or variable pricing policies, circumstances under which they become effective, and any and all fees associated with rides dispatched by TNC;
- TNC drivers may not impose additional charge for transporting a person with a disability, a service animal, or wheelchair or other mobility aid;
- TNC must file with NTA a current detailed security policy meeting industry best practices that describes the security risks associated with the TNC smartphone application and mitigations the TNC has developed to address those risks;
- If TNC collects and maintains information about a customer, including but not limited to user account data and associated credit card data and GPS data, the TNC must file with the NTA a detailed privacy policy meeting industry best practices that describes the specific privacy risks associated with the TNC data collection, and mitigations the TNC has developed to address those risks;
- If the TNC is required to make disclosures under state or federal law regarding security breaches, the TNC must inform the NTA immediately following such disclosure(s);
- TNC website and smartphone application must use only the TNC trade, business or operating name the TNC has on file with the NTA;
- TNC website and smartphone application must require a passenger to create a password protected user account. A passenger may not request service without first logging into his or her account;
- TNC rates must be prominently posted on the website and smartphone application, including any price multiplier or variable pricing policy in effect;

- TNC website and smartphone application must provide passengers, upon request, with an estimate of the total fare, inclusive of all fees and any price multiplier or variable pricing policy in effect, for the ride;
- TNC website and smartphone application must be able to generate an accurate receipt for payment of fares. Upon the passenger's request, a receipt, either in hard copy form or in electronic form, must be transmitted to the passenger. The receipt must contain all of the following information:
  - Vehicle license number;
  - Driver's license number;
  - Total amount due;
  - Itemized fees charged, including any price multiplier or variable pricing policy in effect for the trip; and
  - NTA customer complaint telephone number.
- TNC website and smartphone application must make a wheelchair accessible option available to allow passengers to indicate that they would like a wheelchair accessible vehicle when requesting a trip;
- TNC website and smartphone application must comply with all applicable PCI standards for electronic payments;
- All data required to be collected, transmitted and maintained by TNC must be maintained for at least three (3) years;
- TNC driver electronic device for accepting trips must be mounted in vehicle while in use;
- TNC driver shall have only one (1) electronic device for accepting trips per vehicle;
- All modifications to TNC applications must be approved by NTA prior to implementation in accordance with these regulations, including but not limited to changes to fare schedules, terms of use or other passenger agreements;
- No passenger shall be required to waive the liability of a TNC;
- No passenger shall be required to enter into mandatory arbitration, or waive his or her right to seek legal redress in courts of competent jurisdiction;

- TNC drivers shall undergo initial and periodic professional driver training, to be verified and reported to the NTA by the TNC;
- TNC drivers shall possess drivers licenses issued by the Nevada Department of Motor Vehicles;
- TNC driver vehicles shall be registered with the Nevada Department of Motor Vehicles.

**From:** Marc C. Gordon [mailto:MGordon@ycstrans.com]  
**Sent:** Tuesday, July 21, 2015 10:45 AM  
**To:** JIM DAY  
**Cc:** krushton@cooperlevenson.com; Jonathan Schwartz; David Newton (dnewton@ag.nv.gov); George Assad; Keith Sakelhide; Andrew MacKay  
**Subject:** Uber Suspension and \$7.3 Million Fine in California - July 15, 2015

Dear Jim: You may already be aware of this serious Uber development in California, but in case you are not, I am providing an LA Times article and Order from the California PUC suspending Uber's license to operate as a TNC and fining it \$7.3 Million dollars. This Order is in response for Uber's violation of the very regulations that were passed in 2013 at Uber's request allowing TNCs to operate in California. The Order was issued by Administrative Law Judge Robert Mason on July 15, 2015. I believe there is much to learn from California's recent regulatory experience.

I would appreciate you entering this submission in the record as further comment on behalf of Yellow Checker Star Transportation ("YCS"). YCS advocates a position of strict regulation and oversight of TNCs in order to avoid the serious regulatory challenges that arise when Uber and TNCs enter a market. This particular situation in California provides strong support for that position.

.....

**ORDER**

**IT IS ORDERED** that:

1. Rasier-CA, LLC (Rasier-CA) shall pay a \$1,000.00 contempt fine, and a \$7,326,000 fine, by check or money order payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 40 days of the effective date of this order. Rasier-CA shall write on the face of the check or money order "For deposit to the General Fund pursuant to Decision \_\_\_\_\_."

2. All money received by the California Public Utilities Commission's Fiscal Office pursuant to Ordering Paragraph 1 shall be deposited or transferred to the State of California General Fund.

3. Rasier-CA, LLC's (Rasier-CA) license to operate as a Transportation Network Company shall be suspended. Rasier-CA's suspension shall start 30 days after this decision is served and neither Rasier-CA nor SED files an appeal, and/or a Commissioner does not request review. But if this decision is appealed or a Commissioner requests review, then the suspension shall start 30 days after

the modified decision is issued. The suspension shall remain in effect until Rasier-CA complies fully with the outstanding requirements in Reporting Requirements' g, j, and k in Decision 13-09-045 and pays the above-enumerated fines.

4. Rasier-CA, LLC's Motion to Strike Portions of Safety and Enforcement Division's Verified Reply is denied.

5. The Order to show Cause portion of this rulemaking is closed.

6. The remainder of Rulemaking 12-12-011 is open.

This order is effective today.

Dated July 15, 2015, at San Francisco, California

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## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**  
7-15-15  
12:12 PM

July 15, 2015

TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This proceeding was filed on December 20, 2012, and is assigned to Commissioner Liane M. Randolph and Administrative Law Judge (ALJ) Robert M. Mason III. This is the decision of the Presiding Officer, ALJ Robert M. Mason III.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief  
Administrative Law Judge

KVC: ar9

Attachment

Decision PRESIDING OFFICER'S DECISION (Mailed 7/15/2015)

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

Order Instituting Rulemaking on  
Regulations Relating to Passenger Carriers,  
Ridesharing, and New Online-Enabled  
Transportation Services.

Rulemaking 12-12-011  
(Filed December 20, 2012)

Robert Maguire, Attorney at Law,  
DAVIS WRIGHT TREMAINE LLP,  
Attorney for Rasier-CA, LLC.

Valerie Kao, Safety and Enforcement  
Division, San Francisco.

Brewster Fong, Safety and Enforcement  
Division, San Francisco.

Selina Shek, Attorney at Law, Legal Division, for  
Safety and Enforcement Division.

**PRESIDING OFFICER'S DECISION FINDING RASIER-CA, LLC, IN  
CONTEMPT, IN VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES  
OF PRACTICE AND PROCEDURE, AND THAT RASIER-CA, LLC'S, LICENSE  
TO OPERATE SHOULD BE SUSPENDED FOR FAILURE TO COMPLY WITH  
COMMISSION DECISION 13-09-045**

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**PRESIDING OFFICER'S DECISION FINDING RASIER-CA, LLC IN CONTEMPT, IN VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, AND THAT RASIER-CA, LLC'S LICENSE TO OPERATE SHOULD BE SUSPENDED FOR FAILURE TO COMPLY WITH COMMISSISON DECISION 13-09-045**

**Summary**

This decision finds that Rasier-CA, LLC (Rasier-CA) is in contempt for failing to comply fully with the Reporting Requirements g, j, and k in Decision (D.) 13-09-045. These requirements address accessibility, availability and driver safety information. This decision further finds that Rasier-CA shall be fined in the amount of \$1,000 pursuant to Pub. Util. Code § 2113.

This decision also finds that Rasier-CA violated Rule 1.1 of the Commission's Rules of Practice and Procedure by failing to comply fully with Reporting Requirements g, j, and k in D.13-09-045 and shall pay a fine in the amount of \$7,326,000 pursuant to Pub. Util. Code §§ 2107, 2108, 5411, and 5415.

Finally, this decision finds that Rasier-CA's license shall be suspended. Rasier-CA's suspension shall start 30 days after this decision is served and neither Rasier-CA nor SED files an appeal, and/or a Commissioner does not request review. But if this decision is appealed or a Commissioner requests review, then the suspension shall start 30 days after the modified decision is issued. The suspension shall remain in effect until Rasier-CA complies fully with the outstanding requirements in Reporting Requirements' g, j, and k in D.13-09-045 and pays the above-enumerated fines.

**1. Background**

On September 19, 2013, the Commission, in Decision (D.) 13-09-045 (Decision) created a new category of transportation charter party carrier (TCP) of passengers called Transportation Network Companies (TNCs). The Decision set

forth the various requirements that TNCs must comply with in order to operate in California. Among other regulatory requirements, the Decision required TNCs to submit annual reports containing certain information. Specifically, the Decision states that:

- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a report detailing the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with requests for accessible vehicles.<sup>1</sup>
- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid/donated. Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the

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<sup>1</sup> D.13-09-045 at 30-31 (Requirement g).

number of rides that were requested but not accepted by TNC drivers.<sup>2</sup>

- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.<sup>3</sup>
- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the average and mean number of hours and miles each TNC driver spent driving for the TNC.<sup>4</sup>
- TNCs shall establish a driver training program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. This program must be filed with the Commission within 45 days of the adoption of this decision. TNCs must report

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<sup>2</sup> *Id.* at 31-32 (Requirement j).

<sup>3</sup> *Id.* at 32 (Requirement k).

<sup>4</sup> *Id.* at 32-33 (Requirement l).

to the Commission on an annual basis the number of drivers that became eligible and completed the course.<sup>5</sup>

**1.1. Rasier-CA<sup>6</sup> Failed to Submit All of the Information Ordered in D.13-09-045**

On September 19, 2014, Rasier-CA submitted its annual report information to the Safety and Enforcement Division (SED). SED reviewed the information and found that Rasier-CA had failed to provide all of the information specified in the Decision.

Specifically, SED alleged that Rasier-CA failed to respond to certain reporting requirements in the following manner:

Requirement	Title	What Respondent Failed to Provide
g	Accessibility Information	1.) The number and percentage of customers who requested accessible vehicles;  2.) How often the TNC was able to comply with requests for accessible vehicles;

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<sup>5</sup> *Id.* at 27 (Requirement f).

<sup>6</sup> For the sake of clarity, some initial identifications are in order. First, there is Uber Technologies, Inc. (Uber). Second, there is Rasier, LLC (Rasier), a wholly-owned subsidiary of Uber. Third, there is Rasier-CA, LLC (Rasier-CA), which is also a wholly-owned subsidiary of Uber. Rasier-CA applied for and was granted permission by the Commission to operate as a TNC. Fourth, there is UberX, which this Commission determined in D.13-09-045 to be a TNC. These corporate relationships will be explored in more detail later in this decision.

j	Report on Service Information by Zip Code	<ol style="list-style-type: none"> <li>1.) The number of rides requested and accepted by TNC drivers within each zip code where the TNC operates;</li> <li>2.) The number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates;</li> <li>3.) The date, time, and zip code of each ride request;</li> <li>4.) The concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted;</li> <li>5.) Columns that displays the zip code of where each ride that was requested and accepted began, ended, the miles travelled, and the</li> </ol>

		<p>amount paid/donated;</p> <p>6.) Information aggregated by zip code and a statewide total of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers;</p>
<p>k</p>	<p>Problems with Drivers</p>	<p>1.) For the report on issues with drivers, the cause of each incident reported;</p> <p>2.) For each incident reported, the insurance amount paid, if any, by any party other than the TNC's insurance.<sup>7</sup></p>

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<sup>7</sup> See Exhibit 1 at 4-5.

**1.2. Efforts to Obtain Compliance with Requirements g, j, and k.**

Since September 19, 2014, SED has worked to obtain complete information as required by D.13-09-045 through the issuance of an additional data request dated October 6, 2014. (Exhibit 2, Attachment C.) Rasier-CA provided its claimed confidential responses on October 10, 2014, and a digital versatile disc (DVD) on October 20, 2014. (*Id.*) SED reviewed these further responses and determined that SED has not received all of the information ordered by D.13-09-045.<sup>8</sup> Instead, Rasier-CA provided the following:

Reporting Requirement	Title	What Rasier-CA Provided	Why the Response Is Deficient
g	Accessibility	Rasier-CA provided a narrative of their efforts to date for accommodating visually impaired, persons with service animals, and persons requiring a wheelchair accessible vehicle. (Exhibit 2, Attachment C.)	No actual data was provided.  (Exhibit 1 at 4; Reporter’s Transcript [RT] at 392-393.)
j	Report on Providing Service by Zip Code	Rasier-CA provided electronic files entitled “Percent Completed Out of Requested Within ZIP Code Tabulation Area” and “Share of Activity by ZIP Code Tabulation	Rasier-CA did not provide the raw numbers ordered by D.13-09-045. (Exhibit 1 at 5; RT at 393-396.)

<sup>8</sup> *Id.* at 3-4.

		<p>Area Out of All California.” (Exhibit 2, Attachment C.) These files contained folders with data in Excel cvs [comma separated values] that provided information in aggregates, averages, and percentages. (Exhibit 2, Attachment C.) Rasier-CA also provided a Heatmap of service by zip code. (Exhibit 2, Attachment C.)</p>	
k	<p>Report on Problems with Drivers</p>	<p>Rasier-CA provided information in a file entitled “CPUC Rasier Report on Problems with Drivers.” (Exhibit 2, Attachment C.) Rasier did not provide information regarding causes of incidents and amount paid, if any, by any party other than the TNC’s insurance. (Exhibit 2, Attachment C.) Rasier-CA could not provide information regarding amounts paid by third parties as it did not have this data. (RT at 397:23-28.)</p>	<p>Rasier-CA’s response was incomplete as it has not provided information regarding the cause of the incidents and which driver was at fault. (Exhibit 1 at 5; RT at 397:17-18.)</p>

**1.3. Expansion of the Scope of the Proceeding to Include Order to Show Cause (OSC)**

On November 7, 2014, the then-assigned Commissioner, Michael Peevey, issued a ruling amending the scope of this proceeding to include an OSC against both UberX and Lyft.<sup>9</sup> The ruling states:

As such, this Ruling amends the scope of this proceeding to include an OSC against both UberX and Lyft. As part of the OSC, UberX and Lyft will be given an opportunity to be heard and to explain why they should not be found in contempt, why fines and penalties should not be imposed, and why their licenses to operate should not be revoked or suspended for allegedly violating some of the reporting requirements set forth in D.13-09-045.<sup>10</sup>

The OSC phase of this proceeding was designated as adjudicatory.

**1.4. Rasier-CA was Ordered to Appear and Show Cause.**

On November 14, 2014, the assigned Administrative Law Judge (ALJ) issued a ruling ordering Rasier-CA to appear for hearing and to show cause as to why it should not be found in contempt, why penalties should not be imposed, and why Rasier-CA's license to operate should not be revoked or suspended for its failure to comply with D.13-09-045. The ruling also ordered Rasier-CA to address Rule 1.1 of the Commission's Rules of Practice and Procedure, as well as Pub. Util. Code §§ 701, 2107, 2108, 2113, 5411, 5415, 5378(a), and 5381.

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<sup>9</sup> The Lyft OSC is addressed in a separate decision.

<sup>10</sup> Ruling at 2.

**1.4.1. Pub. Util. Code § 2107**

Pub. Util. Code § 2107 provides for a penalty of not less than five hundred dollars and not more than fifty thousand dollars for a utility's failure or neglect to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission.

**1.4.2. Pub. Util. Code § 2108**

Pub. Util. Code § 2108 provides that every violation of any order, decision, decree, rule, direction, demand or requirement of the Commission is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

**1.4.3. Pub. Util. Code § 5381**

Pub. Util. Code § 5381 provides that the Commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

**1.4.4. Pub. Util. Code § 5411**

Pub. Util. Code § 5411 provides that a TCP that fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the Commission is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars and not more than five thousand dollars for every violation or failure to comply with any order or decision of the Commission.

**1.4.5. Pub. Util. Code § 5415**

Every violation of Pub. Util. Code § 5411 *et seq.* is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense. (Pub. Util. Code § 5415.)

**1.4.6. Pub. Util. Code § 2113**

Pub. Util. Code § 2113 states that a utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the Commission or any Commissioner is in contempt of the Commission, and may be punished by the Commission in the same manner and to the same extent as contempt is punished by courts of record.

**1.4.7. Rule 1.1**

Pursuant to Rule 1.1 of the Commission's Rules of Practice and Procedure, any person who transacts business with the Commission may never mislead the Commission or its staff by an artifice or false statement of fact or law. A person who violates Rule 1.1 may be sanctioned in accordance with Pub. Util. Code § 2107.

**1.4.8. Pub. Util. Code § 701**

In addition to imposing monetary fines, penalties, and holding a utility in contempt, the Commission can do all things necessary and convenient in the exercise of its power and jurisdiction, pursuant to Pub. Util. Code § 701. Accordingly, penalties may also include additional requirements for Respondent to immediately rectify its violations by requiring it to immediately turn over all requested information to SED, or any other measures the Commission deems necessary.

**1.4.9. Pub. Util. Code § 5378(a)**

Finally, the Commission is empowered by law to permanently revoke the Respondent's operating authority. Pub. Util. Code § 5378(a) provides that the Commission may cancel, revoke, or suspend any operating permit or certificate" issued to any charter party carrier, including Respondent, for any violation of any order, decision, rule, or requirement of the Commission.

In sum, the November 14, 2014 ruling placed Rasier-CA on notice that the Commission might impose, fines, and/or penalties, hold Respondent in contempt, and/or impose any other punishments consistent with the foregoing Public Utilities Code Sections and Rule 1.1, if found to be supported by the evidence at the OSC hearing.

### **1.5. Party Filings for OSC Hearing**

On December 4, 2014, Rasier-CA filed its Verified Statement Responding to Order to Show Cause. (Exhibit 10.) In it, Rasier-CA trivializes the seriousness of its failure to produce by mischaracterizing this matter as presenting “a garden variety discovery dispute about the unduly burdensome, cumulative, and overly broad scope of data production request (j), and the form and manner in which TNCs may satisfy that request.” (Verified Statement at 3.)

Rasier-CA is in error in several respects. First, this is not a discovery dispute between parties to a proceeding. Rasier-CA has failed to comply with certain reporting requirements mandated by this Commission when it unanimously adopted D.13-09-045. As such, Rasier-CA was and is obligated to comply with the Commission’s Orders.

Second, Rasier-CA’s assertion that the reporting requirements are unduly burdensome, cumulative, and overly broad is undermined by the fact that other regulated TNCs have complied with Reporting Requirements g, j, and k.<sup>11</sup> Additionally, as we discuss, *infra*, Rasier-CA’s unduly burdensome, cumulative, and over broad objections are factually and legally unsupported.

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<sup>11</sup> The OSC was only directed to UberX and Lyft as the other TNCs complied with D.13-09-045’s reporting requirements. Lyft eventually complied with Report Requirement (j) on November 11 and November 12, 2014. (RT at 440:26-441:6; and 435:1-13.)

On December 4, 2014, Rasier-CA served its Petition to Modify D.13-09-045.

On December 8, 2014, at 5:01 p.m., Rasier-CA served an Emergency Motion Requesting Deferral of Hearings. The assigned ALJ denied the Emergency Motion on December 8, 2014 at 7:13 p.m.

On December 9, 2014, SED filed its Verified Reply to Rasier-CA's Verified Statement Responding to Order to Show Cause.

On December 10, 2014, Rasier-CA filed a Motion to Strike Portions of SED's Verified Reply.

Rasier-CA and SED submitted their respective testimony and the evidentiary hearing was held on December 18, 2014. The following documents were received into evidence:

Exhibit Number	Title
1	Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045 – Public Version
2	Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045 – Confidential Version
3	Safety and Enforcement Division's Responses & Objections to Rasier-CA, LLC's First Set of Data Requests
4	Safety and Enforcement Division's Reply to the Verified Statement of Rasier-CA, LLC Responding to Order to Show Cause in Rulemaking 12-12-011
5	Qualifications of Valerie Kao
6	Qualifications of Brewster Fong
7	Decision 13-09-045
8	Assigned Commissioner and Assigned Administrative Law Judge Scoping Memo and

	Ruling for Phase II
9	Proposed Decision of Commissioner Peevey (Mailed 7/30/2013) Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry
10	Verified Statement of Rasier-CA, LLC Responding to Order to Show Cause filed December 4, 2014
11	Class P Transportation Network Company Permit issued to Rasier-CA, LLC

On January 21, 2015, SED and Rasier-CA filed their respective post-hearing opening briefs.

On February 5, 2015, SED and Rasier-CA filed their respective post-hearing reply briefs.

**1.6. Rasier-CA’s Motion to Set Aside Submission and Reopen the Record**

On February 17, 2015, Rasier-CA filed its Motion to Set Aside Submission and Reopen the Record in Order to Show Cause in Rulemaking 12-12-011. On February 19, 2015, the assigned ALJ granted the Motion and set a further briefing schedule. The ruling also received the following into evidence:

11-A	Declaration of Wayne Ting
11-B	Declaration of Krishna Juvvadi

On February 27, 2015, SED filed its Response to Rasier-CA’s Motion to Set Aside Submission and Reopen the Record in Order to Show Cause in Rulemaking 12-12-011.

On March 6, 2015 Rasier-CA filed its Reply to SED’s Response. As we explain, *infra*, the matter was submitted as of June 23, 2015.

## **2. Matters to Which this Decision Takes Official Notice or Admits as Authorized Admissions and Party Admissions**

### **2.1. Official Notice/Judicial Notice**

Throughout this decision, there are references to pleadings, filings, decisions, and statements regarding Uber, Rasier, LLC, and/or Rasier-CA in either regulatory proceedings in other states and federal court, or on the internet. Pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."

Evidence Code § 452(a) states that judicial notice may be taken of the "decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state." Pursuant to Evidence Code § 452 (a), this decision takes judicial notice of the following decision:

- *Notice of Decision*, dated January 6, 2015, from the Taxi & Limousine Tribunal, A Division of the Office of Administrative Trials and Hearings, City of New York, in the matter of *Taxi and Limousine Commission against Weiter LLC*, Summons Number FC0000332 (*Notice of Decision, Weiter*).

Evidence Code § 452 (d) states that judicial notice may be taken of the "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Pursuant to Evidence Code § 452(d), this decision takes judicial notice of the following pleadings, documents, and rulings from *National Federation of the Blind of California v. Uber Technologies, Inc.*, (N.D.Cal. 2014), Case No. 3:14-cv-4086:

- The Complaint and First Amended Complaint, filed September 9, 2014, and November 12, 2014, respectively (Complaint, *National*; First Amended Complaint, *National*)

- Proof of Service on Uber Technologies, Inc., filed September 25, 2014 (Proof of Service, *National*);
- Stipulation to Extend Time for Defendant Uber Technologies, Inc. to File a Responsive Pleading, filed October 9, 2014 (Stipulation, *National*);
- Defendant Uber Technologies, Inc.'s Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities in Support Thereof, filed October 22, 2014 (Uber's Motion to Dismiss, *National*);
- Declaration of Michael Colman in Support of Defendant Uber Technologies, Inc.'s Motion to Dismiss, filed October 22, 2014 (Colman Decl., *National*);
- Order Denying Motion to Dismiss, filed April 17, 2015 (Order, *National*); and
- Defendants' Answer to Plaintiffs' First Amended Complaint, filed May 1, 2015 (Defendants' Answer, *National*).

Pursuant to Evidence Code Section 452(d), this decision also takes judicial notice of the following pleadings, documents, and rulings from *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2013),

Case No. 13-03826-EMC:

- Defendant Uber Technologies, Inc.'s Answer to Plaintiffs' Class Action Complaint, filed December 19, 2013 (Uber's Answer, *O'Connor*);
- Order Granting Defendant's Motion for Judgment on the Pleadings, filed September 4, 2014 (Order Granting, *O'Connor*);

- Declaration of Michael Colman in Support of Defendant's Motion for Summary Judgment, filed December 4, 2014 (Colman Decl., *O'Connor*); and
- Order Denying Defendant Uber Technologies, Inc.'s Motion for Summary Judgment, filed March 11, 2015 (Order Denying, *O'Connor*).

Evidence Code § 452 (h) states that judicial notice may be taken of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Pursuant to Evidence Code § 452(h), this decision takes judicial notice of information from Uber's website regarding its operations, particularly the following blogs:

- *4 YEARS IN*, dated June 6, 2014, and posted by Travis Kalanick; and
- *Driving Solutions To Build Smarter Cities*, dated January 13, 2015, and posted by Justin Kintz.

Prior to taking judicial notice, the parties were notified pursuant to Evidence Code Section 455(a) which states:

If the trial court has been requested to take or has taken or proposes to take judicial notice of such matter, the court shall afford each party reasonable opportunity, before the jury is instructed or before the cause is submitted for decision by the court, to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.

Rasier-CA and SED were given until June 23, 2015, to present their positions on the propriety of taking judicial notice, as well as the tenor of the matter to be noticed. Their comments have been received and analyzed, and nothing

contained therein causes this decision to refrain from its determination to take judicial notice of those matters identified above.<sup>12</sup>

In making this determination to take judicial notice, this decision acknowledges that there is a split of authority in California regarding taking judicial notice of pleadings, findings of fact, and conclusions of law in other proceedings. There are some California decisions that have recognized that it is appropriate to take judicial notice of the findings of fact and conclusions of law, but not hearsay allegations from other proceedings. (See *Boyce v. T.D. Service Co.* (2015) 235 Cal.App.4th 429, 434; *Weiner v. Mitchell, Silberberg & Knupp* (1980) 114 Cal.App.3d 39, 45-46; *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914; and *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605. Other California decisions have taken a contrary view and have reasoned that it is not appropriate to take judicial notice of the findings of fact and conclusions of law in other proceedings since the findings and conclusions may be reasonably subject to dispute and, therefore, the findings and conclusions may not necessarily be correct. (See *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 148; *Lockley v. Law Office of Cantrell, Green Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882; and *Sosinsky v. Grant* (1992) 6 Cal.App. 4th 1548, 1565 and 1568.)

We have examined these decisions, as well as the decisions rendered pursuant to Federal Rule of Evidence 201(b),<sup>13</sup> the federal counterpart to

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<sup>12</sup> By separate ruling, we instruct our Docket Office to accept the Rasier-CA and SED comments on the judicial notice question for filing so that they are part of the record.

<sup>13</sup> The court may judicially notice a fact that is not subject to reasonable dispute because it:

*Footnote continued on next page*

Evidence Code § 452 (h).<sup>14</sup> Without having to resolve the split of authority, we adopt the following approach for purposes of this decision: first, we will take judicial notice of the existence of pleadings, findings of fact, and conclusions of law in other proceedings. Second, with the exception noted below, we will not take judicial notice of the truth of the matters asserted or found in the pleadings, findings of fact, and conclusions of law if they were matters that were reasonably subject to dispute in the other proceedings. Third, we will take judicial notice of the truth of certain matters asserted by Uber in other proceedings (*e.g.* through the Uber's pleadings and declarations) which are undisputed, and certain findings of fact and conclusions of law that are based on matters asserted by Uber, put into evidence by Uber, stipulated to by Uber, or where the matter is not reasonably subject to dispute. We believe this third guiding principle is consistent with Evidence Code § 452 (h) and Federal Rule of Evidence 201(b). (*See Taylor v. Charter Medical Corp.* (5<sup>th</sup> Cir. 1998) 162 F.3d 827, 830 [Some courts have not taken a *per se* rule against taking judicial notice of an adjudicative fact since it is "conceivable that a finding of fact may satisfy the indisputability requirement of Fed.R.Evid. 201(b)[,]" quoting from *General Electric Capital Corp. v. Lease Resolution Corp.* (7<sup>th</sup> Cir. 1997) 128 F.3d 1074, 1082, footnote 6.])

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- (1) is generally known within the trial court's territorial jurisdiction; or
  - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

<sup>14</sup> Judicial notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

With respect to taking judicial notice as to matters on a website, courts have taken judicial notice if it is the website of a party,<sup>15</sup> a government agency,<sup>16</sup> or if the website is a reference center.<sup>17</sup> Although there have been some instances where courts have declined to take judicial notice of a website,<sup>18</sup> we find these decisions to be distinguishable as the information from Uber's website is not something that is subject to interpretation. Instead, the blogs from Uber's website are Uber's assessment of its operations, growth, revenue, and interactions with government agencies.

## 2.2. Authorized Admissions and Party Admissions

Finally, statements made by Uber's CEO, Travis Kalanick, Uber's Head of Policy for North America, Justin Kintz, and a member of Uber's policy and communications team, Matthew Wing, are also admitted as authorized admissions pursuant to Evidence Code § 1222, which provides:

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<sup>15</sup> See *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1573-1574 [plaintiff's website]; and *O'Toole v. Northrop Grumman Corp.* (10th Cir. 2007) 499 F.3d 1218, 1224-1225 [company posted retirement earnings on website].

<sup>16</sup> See *People v. Kelly* (2013) 215 Cal.App.4th 297, 304, footnote 4 [Criminal Justice Realignment Resource Center website]; *Caldwell v. Caldwell* (N.D. Cal. 2006) 420 F.Supp.2d 1102, 1105, footnote 3, *aff'd* (9th Cir. 2008) 545 F.3d 1126 [national agency websites]; *Wible v. Aetna Life Ins. Co.* (C.D. Cal. 2005) 375 F.Supp.2d 956, 965-966 [Administrative opinion letter from California Department of Insurance; webpage information]; *United States ex rel. Dingle v. Bioport* (W.D. Mich. 2003) 270 F.Supp.2d 968, 971-972 [public records of government documents].

<sup>17</sup> See *In re Gilbert R.* (2012) 211 Cal.App.4th 514, 519, footnote 1 [reference material from The American Knife and Tool Institute].

<sup>18</sup> See *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193-194 [website and blogs from the Los Angeles Times and Orange County Register were subject to interpretation and for that reason were not subject to judicial notice]; and *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1141, footnote 6 [truth of content of newspaper article not proper for judicial notice and the circumstances under which the articles were published were deemed irrelevant to the Court's discussion].

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:

- (a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the subject matter of the statement;
- (b) The evidence is offered either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

These three individuals are certainly authorized to speak for Uber regarding those matters in their respective fields of expertise. It is only those statements that we admit under Evidence Code § 1222.

Furthermore, these statements would be admissible as the admissions of a party opponent. Pursuant to Evidence Code § 1220:

Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.

In *People v. Horing* (2004) 34 Cal.4th 871, 898, footnote 5, the California Supreme Court clarified the expansive scope of § 1220: "The exception to the hearsay rule for statements of a party is sometimes referred to as the exception for admissions of a party. However, Evidence Code [§] 1220 covers all statements of a party, whether or not they might be otherwise be characterized as admissions." As the statements we admit were those made by representatives of Rasier-CA's parent, Uber, they constitute an admission equally applicable to Rasier-CA.

### 3. Conclusions Regarding Rasier-CA's Compliance and Non Compliance

#### 3.1. Reporting Requirement g (Report on Accessibility)

Rasier-CA asserts that it did not fail to comply with Reporting Requirement g (Report on Disability) because it did not have an accessible-vehicle feature on its Uber App during the reporting period.<sup>19</sup> At the evidentiary hearing, the SED representative acknowledged that since Rasier-CA would not have this feature on its app until October of 2014, there would be no information to report in response to Reporting Requirement g. (RT at 312:17-21.)

But the fact that Rasier-CA may not have had an accessible-vehicle feature on its app does not lead to the conclusion that it lacked any information responsive to Reporting Requirement g. As of September 9, 2014, Uber, Rasier, LLC, and Rasier-CA, LLC had been sued by the National Federation of the Blind of California for discrimination against blind individuals who use service dogs.<sup>20</sup> The complaint alleges multiple instances, all before Rasier-CA's September 19, 2014 reporting date, where blind customers with service dogs claimed they were denied service by UberX drivers.<sup>21</sup> The Complaint also alleges that some of these customers complained to Uber about their treatment.<sup>22</sup>

On September 24, 2014, Uber was served with the complaint.<sup>23</sup>

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<sup>19</sup> Rasier-CA's Reply Brief at 3.

<sup>20</sup> (Complaint, *National*.)

<sup>21</sup> *Id.* at ¶¶ 35, 36, 37, 39, 40, 41, 42, and 43.

<sup>22</sup> *Id.* at ¶¶ 41 and 43.

<sup>23</sup> Proof of Service, *National*.

On October 9, 2014, Uber entered into a stipulation with plaintiffs for additional time to file a responsive pleading.<sup>24</sup>

On October 22, 2014, Uber filed a Motion to Dismiss National Federation of the Blind of California's complaint.

What the above pleadings demonstrate is that as of September 24, 2014, Uber, Rasier-CA's parent company, was aware of allegations of complaints by persons with disabilities regarding their claimed inability to take advantage of the TNC service provided by UberX. As such, Rasier-CA, as Uber's wholly owned subsidiary, should have supplemented its September 19, 2014, report regarding Reporting Requirement g to include the above allegations.

In reaching this conclusion, we take a more expansive view of the concept of accessible vehicles than Rasier-CA. The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities as to matters of public accommodation, specified public transportation service, and travel service.<sup>25</sup> The TNC service Rasier-CA provides can fit, at a minimum, within these definitions.<sup>26</sup> Persons with vision impairment are included within the ADA's definition of disability.<sup>27</sup> California law affords similar protections to

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<sup>24</sup> Stipulation, *National*.

<sup>25</sup> 42 U.S.C. §§ 12182(b), 12184, and 12181(7).

<sup>26</sup> Order Denying [Uber's] Motion to Dismiss at 12-13, *National*.

<sup>27</sup> An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. (42 U.S.C.A. § 12102(2).) A blind or visually impaired person falls within the disability definition. (See 29 C.F.R. § 1630.2(h)(1).)

persons with vision impairment.<sup>28</sup> Thus, and as the Center for Accessible Technology points out, those passengers in need of accessible vehicles can include blind persons traveling with service animals.<sup>29</sup>

**3.2. Reporting Requirement j  
(Report on Providing Service by Zip Code)**

Rasier-CA's declarants (Ting and Juvvadi) assert on February 5, 2015, Rasier-CA produced to SED individual trip-level information, including requested and accepted rides, requested but not accepted rides, and revised annual reports. (Exhibit 11-A at ¶ 3; Exhibit 11-B at ¶ 3.) SED acknowledges that Rasier-CA did produce this information *albeit* 139 days late.<sup>30</sup>

Nevertheless, SED claims that even with this late production, Rasier-CA still remains out of compliance with Reporting Requirement j since the production did not include information on the concomitant date, time and zip

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<sup>28</sup> Civil Code §54.1 states:

(a) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

<sup>29</sup> Center for Technology's Opening Comments on OIR at 7-8, filed January 28, 2013.

<sup>30</sup> SED's Reply at 5.

code of each ride that was subsequently accepted or not accepted (*i.e.* of the driver at the time they accept or decline a ride request), as well as fare information.<sup>31</sup>

Rasier-CA asserts that SED's interpretation of Reporting Requirement j as requiring the concomitant date, time, and zip code information regarding the driver (in addition to that of the passenger) for requested and accepted, and requested but not accepted rides, was an unwritten interpretation of Reporting Requirement j.<sup>32</sup> Rasier-CA also asserts that since it is not a traditional public utility, and that the Commission did not initiate the instant rulemaking to establish financial controls, the Commission cannot compel Rasier-CA to disclose fare information.<sup>33</sup>

Yet, SED notified all the TNCs via deficiency letters that this information was required by Reporting Requirement j. (Exhibit 2, Attachment C [SED's letter to Rasier-CA dated October 6, 2014.]) In response to the deficiency letters, the other TNCs provided this information. Thus, Rasier-CA remains out of compliance as to these remaining requirements.

We also reject Rasier-CA's position that it need not produce fare information. First, Rasier-CA's claims that fare information is confidential and trade secret are factually unsupported.<sup>34</sup> When the Uber operation began, the fares were posted on its website:

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<sup>31</sup> *Id.* at 4.

<sup>32</sup> Rasier-CA's Reply at 3.

<sup>33</sup> Rasier-CA's Petition to Modify D.13-09-045 at 14-17.

<sup>34</sup> Rasier-CA's Reply Brief at 5, footnote 4.

<b>Pricing</b>			
<b>Base Fare</b> Start with this fare	\$3.50	\$7.00	\$15.00
<b>Per Mile</b> Speed over 11mph	\$2.75	\$4.00	\$5.00
<b>Per Minute</b> Speed at or below 11mph	\$0.55	\$1.05	\$1.35
<b>Minimum Fare</b>	\$8.00	\$15.00	\$25.00
<b>Cancellation fee</b>	\$5.00	\$10.00	\$10.00
<b>Flat Rates</b>			
<b>SFO Airport and San Francisco</b> Between San Francisco International Airport and the City of San Francisco.	\$50	\$65	\$85
<b>OAK Airport and San Francisco</b> Between Oakland International Airport and the City of San Francisco.	\$65	\$85	\$110
<b>San Francisco and Palo Alto</b> Between the City of San Francisco and Palo Alto.	n/a	\$115	\$150
<b>SFO Airport and Palo Alto</b> Between San Francisco International Airport and Palo Alto.	n/a	\$80	\$105
<b>SJC Airport and Palo Alto</b> Between San Jose International Airport and Palo Alto.	n/a	\$75	\$100

Uber has since updated its website so that a passenger can enter a pick up and destination location and get an estimated fare.<sup>35</sup>

In addition, Uber's Terms and Conditions has a paragraph entitled "Payment Terms" which provides:

<sup>35</sup> [www.uber.com/pricing](http://www.uber.com/pricing)

Any fees that the Company [Uber] may charge you for the Application or Service, are due immediately and are non-refundable. This no refund policy shall apply at all times regardless of your decision to terminate your usage, our decision to terminate your usage, disruption caused to our Application or Service either planned, accidental or intentional, or any reason whatsoever. The Company reserves the right to determine final prevailing pricing – Please note the pricing information published on the website may not reflect the prevailing pricing.<sup>36</sup>

Thus, as Uber has published its rates and has disclosed how it calculates prices, we do not see how divulging to the Commission the actual fares charged would be in violation of any confidential or trade secret information.

Second, we reject the argument that, since the Commission stated, in footnote 6, in D.97-07-063<sup>37</sup> that TCPs are not public utilities, that finding somehow divests the Commission with authority to demand that TNCs provide information regarding actual fares charged. Nothing in the decision or the

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<sup>36</sup> Exhibit B at 44, to the Workshop Brief, filed on April 3, 2013 by TPAC.

<sup>37</sup> Order Instituting Rulemaking re the Specialized Transportation of Unaccompanied Infants & Children. Yet we also note that the California Constitution, Article XII, Section 3 states that providers of transportation of people are considered public utilities:

Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

Regardless of whether TCPs are, in fact, public utilities, the result we reach in this decision as to the Commission's ability to regulate and fine a TCP such as Rasier-CA is the same.

Passenger Charter-Party Carriers' Act prevents the Commission from requiring a TCP from producing fare information to the Commission. To the contrary, pursuant to Pub. Util. Code § 5381, the Commission "may supervise and regulate every charter party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." More specifically, pursuant to Pub. Util. Code § 5389, the Commission may have access at any time to a TCP's operations and "may inspect the accounts, books, papers, and documents of the carrier." The breadth of such authority certainly includes the power to require TNCs to provide information regarding fare information, a fact not lost on the other TNCs that provided this information to the Commission.

**3.3. Reporting Requirement k  
(Report on Problems with Drivers)**

We agree with Rasier-CA that, since it does not have access to amounts paid, if any, by any party other than the TNC's insurance, it was not in violation of D.13-09-045. But Rasier-CA is still out of compliance with Reporting Requirement k since Rasier-CA has not provided information on the cause of each incident.<sup>38</sup>

We are unpersuaded by Rasier-CA's assertion that information regarding the cause of each incident "is not readily available because Rasier-CA did not previously assign a specific cause to each incident." (Exhibit 10 at 13.) Rasier-CA further asserts that the task would entail "stitching together multiple

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<sup>38</sup> *Id.* at 1-3 and 5.

databases and could be misleading and inaccurate.” (*Id.* at 14.) Yet not assigning a cause does not mean that Rasier-CA does not know — or could not determine-- the cause of each incident. While the task may require some effort to retrieve, the fact that the other TNCs have complied with Reporting Requirement k leads us to conclude that the task may not be as Herculean as Rasier-CA makes it out to be.

**3.4. Summary of Rasier-CA’s Failure to Comply with D.13-09-045’s Reporting Requirements**

Reporting Requirement	Title	Information Outstanding
g	Report on Accessibility	The number and percentage of customers who requested accessible vehicles.  How often the TNC was able to comply with requests for accessible vehicles.
j	Report on Providing Service by Zip Code	The concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted.  Amounts paid/donated.
k	Report on Problems with Drivers	The cause of each incident.

**4. Contempt**

**4.1. Contempt and the Appropriate Burden of Proof**

Pursuant to Pub. Util. Code § 2113:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same

manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

While Pub. Util. Code § 2113 does not set forth the precise criteria for a contempt finding, the Commission has articulated such a standard. In *Re Facilities-based Cellular Carriers and Their Practices, Operations and Conduct in connection with Their Siting of Towers*, D.94-11-018, 57 CPUC2d 176, 190, the Commission stated that a contempt proceeding “is quasi-criminal in nature, and therefore the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission.” (Quoting from 6 CPUC2d 336, 339, and citing to 5 CPUC2d 648, 649, and *Ross v. Superior Court of Sacramento County* (1977) 19 Cal.3d 899, 913.) In view of this heightened evidentiary standard, this Commission has required that in order to find a respondent in contempt:

- The person’s conduct must have been willful in the sense that the conduct was inexcusable; or
- That the person accused of the contempt had an indifferent disregard of the duty to comply; and
- Proof must be established beyond a reasonable doubt.<sup>39</sup>

A review of the record demonstrates that the factors for a finding of contempt against Rasier-CA have been established beyond a reasonable doubt.

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<sup>39</sup> 57 CPUC2d at 205, citing *Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317; *In re Burns* (1958) 161 Cal.App.2d 137, 141-142; 68 CPUC 245; 63 CPUC 76; 80 CPUC 318; and D.87-10-059.

**4.2. Rasier-CA's Conduct was Willful  
(i.e. Inexcusable)**

**4.2.1. Rasier-CA had Knowledge of D.13-09-045's  
Reporting Requirements**

Rasier-CA was fully aware of the September 14, 2014 reporting deadline. By its own admission, Rasier-CA's parent, Uber, objected on August 23, 2013 to these reporting requirements when they first appeared in the July 30, 2013 Proposed Decision of Commissioner Peevey. (Exhibit 10 at 6, footnote 10.) These reporting requirements were then made part of D.13-09-045 that was issued on September 23, 2013. Tellingly, Rasier-CA's parent, Uber, chose not to raise any concerns with the reporting requirements when it filed an Application for Rehearing of D.13-09-045 on October 23, 2013. Nor did either Rasier-CA or Uber file a Petition for Modification of D.13-09-045 within the time frame specified in Rule 16.4 of the Commission's Rules of Practice and Procedure.<sup>40</sup> Instead, Rasier-CA filed a Petition to Modify D.13-09-045 on December 4, 2014, less than one month after the OSC was issued, in an obvious attempt to delay the OSC proceeding.

On September 14, 2014, SED sent out a courtesy reminder e-mail to all TNC representatives. (Exhibit 1 at 3.) SED and Rasier-CA representatives met

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<sup>40</sup> 16.4(d) states:

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

Neither Rasier-CA nor Uber met the one-year deadline.

face-to-face on September 11, 2014, and Rasier-CA “explained it could provide the SED with more user-friendly, relevant, and meaningful information, and it could do so in a way that would avoid disclosing confidential and proprietary business information and trade secrets, such as by providing certain information in the aggregate.” (Exhibit 10 at 6-7.)

Rasier-CA was well aware of D.13-09-045’s reporting requirements.

#### **4.2.2. Rasier-CA had the Ability to Comply with D.13-09-045’s Remaining Reporting Requirements**

As the above exchange between Rasier-CA and SED makes clear, Rasier-CA had the ability to comply with D.13-09-045’s remaining reporting requirements. As for Reporting Requirement g, since Rasier-CA’s parent had been sued by the National Federation of the Blind and had been served with the lawsuit, it was aware of allegations, as of September 24, 2014, that persons with disabilities made requests for accessible vehicles and should have produced this information in compliance with Reporting Requirement g.

With respect to Reporting Requirement j, Rasier-CA admits in its Verified Statement that it has the individual trip data ordered by Reporting Requirement j but has not yet produced it. (Verified Statement at 3 [“the detailed, individual trip data sought in request (j) – the only data requested in the TNC Decision that Rasier-CA possesses and has not produced.”].) Instead, Rasier-CA tried to negotiate with SED to produce the information in a format contrary to what was required by D.13-09-045.

Rasier-CA is able to comply with Reporting Requirement j (trip information by zip code) because its parent company, Uber, has provided this information in other jurisdictions. After Massachusetts enacted rules in January 2015 to recognize TNCs, Uber worked out a deal with Boston Mayor Martin J.

Walsh to provide trip data such as ride duration and distance traveled with users' zip codes on a quarterly basis.<sup>41</sup>

Similarly, in New York, the Taxi and Limousine Commission sought trip data (e.g. date of trip, time of trip, pick-up location, and license numbers) which Uber refused to produce citing reasons similar to those articulated in this proceeding.<sup>42</sup> An evidentiary hearing was held before New York City's Taxi & Limousine Tribunal, and after Hearing Officer Ann Macadangdang found that the respondents (company operations all owned by Uber) were guilty and ordered their operating authority suspended until compliance was met,<sup>43</sup> Uber produced the trip data under protest.<sup>44</sup>

What these two instances demonstrate is that Rasier-CA, through the actions of its parent, Uber, has demonstrated an ability to comply with the remaining requirements of Reporting Requirement j.

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<sup>41</sup> "Driving Solutions To Build Smarter Cities." Posted on January 13, 2015 by Justin Kintz, Uber' Head of Policy for North America. Mr. Kintz is also quoted in "Uber Agrees to Share Trip Data in Boston While Refusing to do so in New York." Ainsley O'Connell. Fast Feed. January 13, 2015. <http://www.fastcompany.com/3040861/fast-feed/uber-agrees-to-share-trip-data>; and "Uber Offers Trip Data to Cities, Starting with Boston." Douglas MacMillan. Wall Street Journal. January 13, 2014. <http://blogs.wsj.com/digits/2015/01/13/uber-offers-trip-data-to-cities-starting-in-boston>.

<sup>42</sup> *Notice of Decision, NLC v. Weiter.*

<sup>43</sup> *Id.*

<sup>44</sup> Matthew Wing, member of Uber's policy and communications team, quoted in "Uber backs down in data fight with NYC." Ben Fisher. *New York Business Journal*. January 30, 2015, updated January 31, 2015 <http://www.bizjournals.com/newyork/blog/techflash/2015/01/uber-backs-down-in-data-fight>.

Finally, as for Reporting Requirement k, Rasier-CA has the ability to provide the Commission with information regarding the cause of driver incidents.

**4.3. Rasier-CA Disobeyed D.13-09-045's Reporting Requirements by Asserting Unsubstantiated Legal Arguments**

While Rasier-CA submitted files by September 19, 2014, SED reviewed them and determined that Rasier-CA “had failed to provide a significant portion of the information required by D.13-09-045.” (Exhibit 1 at 3.) Specifically, Rasier-CA did not produce the report on accessibility (Requirement g), report on providing service by zip code (Requirement j), and report on causes of incidents (requirement k). (*Id.* at 4-5.) There is no dispute that Rasier-CA did not comply with D.13-09-045’s reporting requirements by the September 19, 2014 deadline.

**4.3.1. Rasier-CA Wrongfully Characterizes this OSC Proceeding as a Discovery Dispute with SED**

Rasier-CA argues that it had several communications with SED regarding the scope of the reporting requirements, and sought an explanation as to how the Commission and SED intended to use individual trip-level information to protect the public’s safety or prevent redlining, or how they intend to use this data at all. (Exhibit 10 at 7; Exhibit 3 at 3 [Request 1-1].) In advancing this argument, however, Rasier-CA wrongly attempts to transmogrify a Commission order to a discovery dispute, and attempts to shift the burden onto the Commission to justify the need for the information and in the format required. (Exhibit 4 at 1-2.) The Commission’s orders are not party invitations where the Respondent may *R.S.V.P.* as it sees fit. Pursuant to Pub. Util. Code § 702, compliance is mandatory:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

TCPs, which would include TNCs such as Rasier-CA, are also obligated to comply with Commission orders pursuant to Pub. Util. Code § 5381:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Part of the Commission's supervisory and regulatory power includes the issuance of orders to which TCPs and thus TNCs must comply. This is a power that the Commission exercised when it issued D.13-09-045 and ordered the TNCs to comply with the reporting requirements contained therein. Compliance with a Commission order may not be excused because a Respondent questions why the information is needed or how the required information may be used.

Additionally, we question Rasier-CA's sincerity in asserting this line of argument. Rasier-CA is well-aware that D.13-09-045 announced the Commission's intention to hold a workshop to discuss "the impacts of this new mode of transportation and accompanying regulations." (74, OP 10.) As such, full compliance with the reporting requirements is important so that the Commission has sufficient information to enable it to determine if any of the TNC regulations should be modified. For example, the data can help the Commission evaluate if changes should be made to improve safety of

passengers, and ensure equal access to TNC vehicles, especially for passengers with special accessibility needs. The data can also shed light on the impact of TNCs on either increasing or reducing traffic congestion. (Exhibit 4 at 8.)<sup>45</sup> In agreeing to provide trip data in Boston, Justin Kintz, Uber's Head of Policy, stated that the data could help city officials determine where to build new roads or offer other transportation options based on daily commute patterns.<sup>46</sup>

To evaluate these and other transportation impacts, the Commission would certainly need the TNCs to comply with the reporting requirements in order to give the Commission the most exhaustive data possible on the TNC operations. Such an exercise would be in accordance with the Commission's authority to examine records of all entities subject to its jurisdiction,<sup>47</sup> and that services are provided in accordance with Pub. Util. Code § 451 which requires that "every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." A similar sentiment is found in Pub. Util. Code § 5352 regarding TCPs:

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<sup>45</sup> Similarly, in *Notice of Decision, supra*, Hearing Officer Macadangdang reasoned that Uber's refusal to produce trip data conflicted with the government's ability to regulate the TNC industry, citing to *Carniol v. New York City Taxi & Limousine Comm'n* (Sup. Ct. 2013) 975 N.Y.S.2d 842 for the proposition that the "government's interest in generating information to improve service to passengers is both 'legitimate and substantial.'"

<sup>46</sup> See discussion, *supra*.

<sup>47</sup> California Constitution, Article XII, Section 6 states: "The Commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction." See also Pub. Util. Code § 314(a) which gives the Commission, each Commissioner, and each officer and person employed by the Commission the power to "inspect the accounts, books, papers, and documents of any public utility."

The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; and to promote carrier and public safety through its safety enforcement regulations.

Moreover, the “integrity of the regulatory process relies on the accurate and prompt reporting of information.”<sup>48</sup> As this Commission has stated:

Utility compliance with Commission rules is absolutely necessary to the proper functioning of the regulatory process. Disregarding a statutory or Commission directive, regardless of the effects on the public, merits a high level of scrutiny as it undermines the integrity of the regulatory process.<sup>49</sup>

The Legislature enacted Pub. Util. Code §§ 702 and 5381 to ensure regulated utilities obey every Commission decision, order, direction, or rule. Without such mandatory compliance with Pub. Util. Code §§ 702 and 5381, the Commission

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<sup>48</sup> D.15-04-008 at 2. (*Decision Imposing Sanctions for Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure.*)

<sup>49</sup> *Id.* at 6.

would be hampered in its ability to fulfill its duty to obtain and analyze data from regulated utilities in order to establish rules for their regulation.

**4.3.2. Rasier-CA Fails to Substantiate its Claims that the Data Ordered by Reporting Requirements j and k are Unduly Burdensome, Cumulative, and Overly Broad.**

Even if we were dealing with a discovery dispute between parties rather than a Commission decision, the Courts have determined that the objecting party must make a factually particularized showing of hardship to sustain such objections. There must be a specific showing that the ultimate effect of the burden is incommensurate with the result sought. (*See Mead Reinsurance Co. v. Superior Court* (1986) 188 Cal.App.3d 313, 318 [demand for inspection of insurer's files deemed oppressive where uncontradicted declaration showed over 13,000 claims would have to be reviewed and requiring five claims adjusters to work full time for six weeks each]; and *West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417-418 [trial court denied a motion to compel documents that would have required the answering party to search 78 of its branch offices. Yet even with this showing the California Supreme Court reversed, reasoning that while there was an indication that "some burden would be imposed on the respondent, Pacific Finance Loans, to answer the interrogatory, the extent thereof was not specifically set forth." The declaration also failed to indicate "any evidence of oppression," which "must not be equated with burden."].)

Rasier-CA has failed to carry its burden. Without any factual substantiation, Rasier-CA asserts that the trip data ordered by Reporting Requirement j is "unduly burdensome, cumulative, and overly broad." (Exhibit 10, 3.) Such a statement is similar to Rasier-CA's earlier unsubstantiated claims that it lacked the information technology and trained staff to extract the

required data within the specified timeframe. (Exhibit 1 at 4.) Rasier-CA's claims are suspect when one realizes that other TNCs regulated by this Commission had no difficulty meeting the reporting deadline (Exhibit 1 at 4, footnote 7), and Lyft has now complied with Reporting Requirement j.<sup>50</sup> SED continued to press Rasier-CA on this topic, and in response to SED's follow up data request as to why Rasier-CA did not use the on-line template for complying with Reporting Requirement j, Rasier-CA said that "the voluminous amount of data produced by Rasier-CA simply would not fit on the templates provided." (Exhibit 2, Attachment C [Rasier-CA's Response to SED's Data Request, Question 11].) Putting aside the fact that the templates were available on the Commission's website as of February 12, 2014 (Exhibit 1 at 6), which should have given Rasier-CA ample time to determine if it could utilize the template, Rasier-CA did have the option of supplying the Reporting Requirement j data with a different template as long as it provided the information required by D.13-09-045. (Exhibit 4 at 6 ["SED confirmed during the September 11, 2014 meeting that Rasier-CA may submit the required data in a different format if Rasier-CA could not, for whatever reason, use the reporting templates, consistent with the format discussion contained in D.13-09-045".])

Rasier-CA's position is not only unsubstantiated, but it is undermined by its claim that it "offered to pay for SED to select and retain an independent third party to audit the information it produced, and to give the SED full access to Rasier-CA's electronic data at a third-party location for inspection." (Exhibit 10 at 19.) If Rasier-CA has the ability to hire an independent third party, it is not clear

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<sup>50</sup> See Joint Motion of the California Public Utilities Commission's Safety and Enforcement Division and Lyft, Inc. for Commission Approval of Settlement Agreement at 2.

why Rasier-CA cannot instruct that third party to organize and supply the trip data in the manner required by the Reporting Requirement j template.

Rasier-CA fares no better with its objections to Reporting Requirement k. It asserts that providing the cause narrative for each incident would impose “a tremendous burden,” and would be “unduly burdensome and cumulative.” (Exhibit 10 at 14.) Rasier-CA fails to establish, in the detail required by *Mead* and *Pico*, how much effort would be required to comply. By failing to meet that evidentiary showing, Rasier-CA’s objections are nothing more than unsubstantiated conclusions.

In sum, Rasier-CA’s arguments are nothing more than an elaborate obfuscation designed to hide the fact that it does not want to – rather than cannot – comply with Reporting Requirements j and k in D.13-09-045.

#### **4.3.3. Rasier-CA Fails to Substantiate its Claim that Strict Compliance with Reporting Requirements j Violates the Fourth Amendment**

Rasier-CA argues that, because Reporting Requirement j is essentially unbounded in scope, requiring strict compliance would violate the unreasonable search and seizure prohibition set forth in the Fourth Amendment to the United States Constitution. (Exhibit 10 at 22-23, which also references the arguments in Rasier-CA’s Petition to Modify D.13-09-045 at 17-18.) Rasier-CA asserts the trip data lacks any connection to a legitimate regulatory purpose such as securing public safety or equal access to TNC services. (*Id.*)

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,

and particularly describing the place to be searched, and the persons or things to be seized.

In *Patel v. City of Los Angeles* (9<sup>th</sup> Cir. 2013) 738 F.3d 1058, 1064, the Court stated that the government may require a business to maintain records and to make them available for inspection “when necessary to further a legitimate regulatory interest,” and the inspection must be specific in directive so that compliance is not “unreasonably burdensome.”

We reject Rasier-CA’s attempt to rely on the Fourth Amendment to excuse compliance with Reporting Requirement j. First, in D.13-09-045, the Commission stated it would conduct a further analysis of the TNC industry as a whole “to consider the impacts of this new mode of transportation and accompanying regulations.”<sup>51</sup> The Commission has been tasked by the Legislature to regulate certain aspects of the transportation industry, and that includes TCPs, of which TNCs are a subset.<sup>52</sup> Since the Commission was regulating a new industry, it wanted to have the opportunity to evaluate the impact of its regulations on the industry and the public.<sup>53</sup> Thus, it required the regulated TNCs to comply with the reporting requirements within a year after the issuance of the decision.<sup>54</sup> The reporting requirements are part of the adopted regulations, and the Commission needs each regulated TNC to comply in full so that the Commission acquires the

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<sup>51</sup> D.13-09-045 at 74, OP 10.

<sup>52</sup> *Id.* at 21-24.

<sup>53</sup> *Id.* at 74, OP 10.

<sup>54</sup> *Id.* at 30-33.

fullest possible picture of the impact that TNCs are having on California passengers wishing to avail themselves of this TNC service.

Accordingly, we find that the Commission's reporting requirements do further a legitimate regulatory interest. We also find that the instant case is similar to *California Bankers Association v. Shultz* (1974) 416 U.S. 21, 66-67 wherein the Supreme Court held that the Secretary of State's requirement that banks file reports dealing with particular phases of their activities did not violate the Fourth Amendment. The banks were not mere strangers or bystanders with respect to the transactions that they were required to report. To the contrary, the banks are parties to the transactions and earn portions of their income from conducting such transactions and may have kept reports of these transactions for their own purposes. Similarly, the TNCs such as Rasier-CA are in the business of making transportation services available to customers and are undoubtedly keeping trip data information on these rides. Finally, as we noted, *supra*, Rasier-CA's parent, Uber, is providing similar trip data to Boston and New York City regulatory agencies so Rasier-CA, too, understands the value of that information.

We note that transportation entities have had their Fourth Amendment challenges rejected in other jurisdictions and have been required to produce trip data. In *Carniol*, which was cited in *Notice of Decision, supra*, where Uber's challenges to providing trip data were rejected, the Court cited to *Minnesota v. Carter* (1998) 525 U.S. 83, 88 for the proposition that a party may not prevail on a Fourth Amendment claim unless he can show that the search and seizure by the state infringed on a legitimate expectation of privacy. Where a government entity is vested with broad authority to promulgate and implement a regulatory program for the regulated transportation industry, those participating "have a

diminished expectation of privacy, particularly in information related to the goals of the industry regulation.” (*Buliga v. New York City Taxi Limousine Comm’n* (2007) WL 4547738 \*2, *aff’d sub nom. Buliga v. New York City Taxi & Limousine Comm’n* 324 Fed Appx 82 (2d Cir. 2009); and *Statharos v. New York City Taxi & Limousine Comm’n* (2d Cir. 1999) 198 F.3d 317, 325.) This is true even beyond the transportation industry since the key is whether the industry is closely regulated. The United States Supreme Court recognized that the greater the regulation the more those subject to the regulation can expect intrusions upon their privacy as it pertains to their work. (*Vernonia Sch. Dist. 47J v. Acton* (1995) 515 U.S. 646, 657.)

Such is the case with the Commission’s jurisdiction over its regulated transportation providers. As provided in Article XII of the California Constitution and the Charter-party Carriers’ Act (Pub. Util. Code § 5351 *et seq.*), the Commission has for decades been vested with a broad grant of authority to regulate TCPs. For example, Pub. Util. Code § 5381 states:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

This Commission found in D.13-09-045 that TNCs were TCPs subject to the Commission’s existing jurisdiction.<sup>55</sup> Pursuant to General Order 157-D, Section 3.01, providers of prearranged transportation are required to maintain waybills which must include, at a minimum, points of origination and destination. Pursuant to General Order 157-D, Section 6.01, every TCP is

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<sup>55</sup> At 23.

required to maintain a set of records which reflect information as to the services performed, including the waybills described in Section 3.01. The Commission also found that it would expand on its regulations regarding TCPs and utilize its broad powers under Pub. Util. Code § 701 to develop new categories of regulation when a new technology is introduced into an existing industry.<sup>56</sup> Given this expansive authority, TNCs would certainly have reason to expect intrusions upon their privacy as it relates to the provision of TNC services.

Second, the reporting requirement cannot be deemed burdensome or oppressive since every other regulated TNC except for Rasier-CA has already complied.

In sum, Rasier-CA's Fourth Amendment challenge is rejected.

#### **4.3.4. Rasier-CA Fails to Substantiate its Claim that the Date Ordered by Requirement j is Trade Secret Commercial Information**

Pursuant to Civil Code § 3426.1, a trade-secret is "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Rasier-CA fails to meet this two-part definition. First, the type of consumer data compilations that have been accorded trade secret status are ones that contain client names, addresses and phone numbers that have been acquired by lengthy and expensive efforts. (*See MAI Sys. Corp. v. Peak Computer, Inc.*

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<sup>56</sup> *Id.*

(9<sup>th</sup> Cir. 1993) 991 F.2d 511, 521, *cert. denied*, 510 U.S. 1033; *Courtesy Temp. Serv. v. Camacho* (1990) 222 Cal.App.3d 1278, 1288.) In other words, the party seeking trade-secret protection has, on its own initiative, developed some product or process for its own private economic benefit. In contrast, it is the Commission that has ordered the TNCs to respond, in template format, with the trip data by zip code. The compilation is being put together at the behest of the Commission, rather than by Rasier-CA for some competitive advantage over its competitors.

Second, Rasier-CA could not have any expectation that the trip data ordered by the Commission would be kept secret from the Commission. A trade secret claim cannot be used as a shield to deny access to the very regulatory agency that has ordered the information's creation and compilation. Indeed, given Rasier-CA's voluntary preparation and submittal of trip data in Boston, and the submittal of trip data in New York so that its license suspension could be lifted, Rasier-CA does not have a reasonable expectation that all trip data would meet the definition of a trade secret. As the Supreme Court noted in *Ruckelshaus v. Monsanto Company* (1984) 467 U.S. 986, 1002: "if an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publically discloses the secret, his property right is extinguished."

Third, Rasier-CA's assertion of a trade secret also stems from the apparent fear that, if the information it provides to the Commission is released to the public, its competitors may obtain some economic value from the disclosure. (Exhibit 10 at 23-24.) Yet Rasier-CA fails to make a credible argument as to how its competitors can obtain economic value from the information's disclosure. All TNC drivers are competing for the same pool of potential passengers. All TNC drivers know where the zip codes and neighborhoods are that have the greater

chances of securing rides for the day, so any release of Rasier-CA's trip data isn't going to provide the competition with information that they don't already possess.

Finally, even if the data were subject to a trade-secret privilege, steps can be made to maintain the secrecy of the information. As Rasier-CA acknowledges, SED utilized aggregate information at the Commission's *en banc* regarding driver work hours. (Exhibit 10 at 21.) Such a disclosure is permissible as a means of protecting alleged trade secret information.<sup>57</sup> Rasier-CA fails to advance a plausible argument regarding how the release of this aggregate information compromised any alleged trade secret. When SED moved exhibits into evidence at the evidentiary hearing, it submitted both a public version of its staff report and a confidential version of its staff report in recognition of Rasier-CA's claims of confidentiality. (Exhibits 1 and 2, respectively.) Thus, Commission staff has undertaken steps to protect the alleged proprietary nature of Rasier-CA's data.

#### **4.3.5. Rasier-CA Fails to Substantiate its Claim that the Disclosure of Trip Data Would Amount an Unconstitutional Taking of a Trade Secret**

The Takings Clause, which is deemed applicable to the states *via* the Fourteenth Amendment,<sup>58</sup> is found in the Fifth Amendment of the U.S.

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<sup>57</sup> For example, Pub. Util. Code § 398.5(b) provides that information provided to the Energy Commission "shall not be released except in an aggregated form such that trade secrets cannot be discerned."

<sup>58</sup> *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617 ("The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 41 L. Ed. 979, 17 S. Ct. 581 (1897), prohibits the government from taking private property for public use without just compensation.")

Constitution and provides that “nor shall private property be taken for public use, without just compensation.” The purpose behind the clause is “to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” (*Armstrong v. United States* (1960) 364 U.S. 40, 49.) While takings law had its genesis in real property disputes, over time the United States Supreme Court expanded the constitutional protection of property beyond the concepts of title and possession and sought to protect the value of investments against governmental use or regulation. (See *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 [“while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”])<sup>59</sup> In *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 538, the United States Supreme Court recognized two categories of regulatory takings for Fifth Amendment purposes: first, where government requires an owner to suffer a permanent physical invasion of the property; and second, where the government regulation completely deprives an owner of all economically beneficial use of the property.<sup>60</sup>

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<sup>59</sup> California law also has a takings clause. Article I, Section 19 of the California Constitution provides in part: “Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.”

<sup>60</sup> See also *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1027-1028, where the Supreme Court recognized that by reason of the State’s traditionally high degree of control over commercial dealings, regulations can constitutionally render personal property economically worthless. To be an unconstitutional taking, the property right has to have been “extinguished.” (*Ruckelhaus v. Monsanto Co.* (1984) 467 U.S. 986, 1002.)

These two categories of regulatory taking must be weighed against the deference that must be accorded to the decisional authority of state regulatory bodies. In *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299, 313-314, the Supreme Court discussed the deference that should be given to both state legislative bodies, as well as state public utilities commissions that are an extension of the legislature:

It cannot seriously be contended that the Constitution prevents state legislatures from giving specific instructions to their utility commissions. We have never doubted that state legislatures are competent bodies to set utility rates. And the Pennsylvania PUC is essentially an administrative arm of the legislature [citations omitted.] We stated in *Permian Basin* that the commission "must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests."...

As such, other courts have also recognized that "every statute promulgated by the Legislature is fortified with a strong presumption of regularity and constitutionality." (*Keystone Insurance Co. v. Foster*, 732 F. Supp. 36 (E.D. Pa. 1990); *Illinois v. Krull*, (1987) 480 U.S. 340, 351 ( ["Indeed, by according laws a presumption of constitutional validity, courts presume that legislatures act in a constitutional manner. (See e.g., *McDonald v. Board of Election Comm'rs of Chicago* (1969) 394 U.S. 802, 808-809.)

The concern for respecting state legislative action is certainly applicable to the Commission's regulatory activities. It derives some of its powers from Article XII of the California Constitution and by powers granted from the Legislature. (*People v. Western Air Lines, Inc.*(1954) 42 Cal.2d, 621, 634 ["The Commission is therefore a regulatory body of constitutional origin, deriving certain of its powers by direct grant from the Constitution which created it.

(*Pacific Tel. & Tel. Co. v. Eshleman* (1913), 166 Cal. 640 [137 P. 1119, Ann.Cas. 1915C 822, 50 L.R.A.N.S. 652]; *Morel v. Railroad Com.* (1938), 11 Cal.2d 488 [81 P.2d 144].) The Legislature is given plenary power to confer other powers upon the Commission. Art. XII, §§ 22 and 23.)”].)

In *Penn Central Transportation Co v. New York City* (1978) 438 U.S. 104, 124, the Supreme Court acknowledged that it has been unable to develop any set formula for determining when government action has gone beyond regulation and constitutes a taking. Nevertheless, *Penn Central* set forth several factors that have particular significance:

- The economic impact of the regulation on the claimant;
- The extent to which the regulation has interfered with distinct investment-backed expectations that the integrity of the trade secret will be maintained; and
- The character of the governmental action.

While written in the conjunctive rather than the disjunctive, some decisions suggest that a reviewing court “may dispose of a takings claim on the basis of one or two of these factors.” (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4<sup>th</sup> 1261, 1277; *Bronco Wine v. Jolly*(2005) 129 Cal. App.4<sup>th</sup> 988, 1035 [“The court may dispose of a takings claim on the basis of one or two of these factors. (*Maritrans Inc. v. United States* (Fed. Cir. 2003) 342 F.3d 1344, 1359 [where the nature of the governmental action and the economic impact of the regulation did not establish a taking, the court need not consider investment-backed expectations]; *Ruckelshaus v. Monsanto Co., supra*, 467 U.S. 986, 1009 ] [disposing of takings claim relating to trade secrets on absence of reasonable investment-backed expectations prior to the effective date of the 1972 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act ].) But for completeness sake,

we will evaluate Rasier-CA's takings argument against all of the criteria set forth, *supra*, in both *Lingle* and in *Penn Central*.

Rasier-CA fails to establish that providing trip data meets either definition of a regulatory taking set forth in *Lingle*. First, there is no permanent physical invasion into Rasier-CA's property. Instead, the trip data is information that the Commission has ordered all TNCs to maintain and report upon in the manner required by D.13-09-045. What is involved is the electronic transfer of information that will be analyzed and evaluated by the Commission as part of its regulatory responsibility over the TNC industry. Second, compliance with Reporting Requirement j does not deprive Rasier-CA of all economically beneficial use of its property. Rasier-CA is free to continue analyzing trip data in order to refine or adjust its transportation business model for the TNC drivers that subscribe to the Uber App.

Rasier-CA's regulatory takings argument also fails under the *Penn Central* factors. With respect to the character-of-the-governmental- action prong, a takings claim is less likely to be found "when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." (*Penn Central, supra*, 438 U.S. at 124.) Here, the reason for requiring the trip data in raw form is for the Commission to continue reviewing its regulations over the TNC industry in order to evaluate the impact on the riding public. Determining who is being served, what areas are being served, and the volume can assist the Commission in deciding if this new mode of transportation is being made available to all customers utilizing the Uber app for service. Equal access to a regulated transportation service is the common good that is one of the prime goals of the Commission's regulatory authority over the transportation industry.

Rasier-CA's argument also fails under the economic-impact prong. Here the inquiry is whether the regulation impairs the value or use of the property according to the owners' general use of their property. (*Phillip Morris v. Reilly* (2002) 312 F.3d 24, 41, citing *Pruneyard Shopping Center v. Robins* (1980) 447 U.S. 74, 83.) In contrast to *Phillip Morris*, where Massachusetts required tobacco companies to submit their lists of all ingredients used in manufacturing tobacco products so that this information could be disclosed to the public, the Commission has ordered Rasier-CA to submit the trip data to just the Commission for internal analysis as part of its regulatory authority over the TNC industry. In sum, even if Rasier-CA's trip data were a trade secret, neither the value of the property, nor the use to the property, has been impaired or extinguished simply by providing the information to the Commission.

Finally, Rasier-CA's argument fails under the investment-backed-privacy-expectation standard. As the Supreme Court explained in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155, 161, property interests, and the privacy expectations attendant thereto, "are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Here, there is no state law that recognizes trip data as inherently private or that the creation of same invests it with some sense of privacy. Indeed, Rasier-CA was aware that the Commission ordered all TNCs to create the trip data report so that the Commission could determine how its regulations were working and if any adjustments would be needed. In other words, Rasier-CA's claim of a privacy expectation is subject to the Commission's power to regulate TNCs for the public good. Moreover, even if there was a distinct investment-backed expectation, "a taking through an exercise of the police power occurs only when the regulation

'has nearly the same effect as the complete destruction of [the property] rights' of the owner." (*Pace Resources, Inc. v. Shrewsbury Tp.* (3<sup>rd</sup> Cir. 1987) 808 F.2d 1023, 1033, quoting *Keystone Bituminous Coal Association v. Duncan* (3d Cir. 1985) 771 F.2d 707, 716, *aff'd* (1987) 480 U.S. 470.) There is no complete destruction of Rasier-CA's property as it can utilize its trip data for whatever legitimate business purposes it deems appropriate.

In sum, Rasier-CA fails to substantiate its unconstitutional-taking argument.

#### **4.4. Rasier-CA's Claim of Substantial Compliance is Factually Erroneous**

##### **4.4.1. Burden of Proof**

Rasier-CA cites to numerous Commission decisions (and appends approximately 47 Commission decisions to its appendix of authorities) where the concept of substantial compliance is utilized but a precise and uniform definition has not been articulated.<sup>61</sup> In the Commission decision upon which Rasier-CA places principal reliance in its Verified Statement, *Butrica v. Beasley, dba Phillipsville Water Company (Beasley)*,<sup>62</sup> we glean that substantial compliance can be established if there has been some significant effort to comply with the Commission's orders.<sup>63</sup> This standard, if it can truly be called that, is similar to the one articulated by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4<sup>th</sup> 401, 426: "substantial compliance, as the phrase is used in the decisions, means actual compliance in

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<sup>61</sup> Exhibit 10 at 15-19; and Rasier-CA's Post-Hearing Opening Brief at 9-10.

<sup>62</sup> Decision No. 88933 (June 13, 1978), Case No. 10129, filed June 23, 1976.

<sup>63</sup> *Id.* at 7-9.

respect to the substance essential to every reasonable objective of the statute. ... Where there is compliance as to all matters of substance technical deviations are not to be given the stature of noncompliance. ... Substance prevails over form.”

**4.4.2. Rasier-CA has not Substantially Complied  
with Reporting Requirement j  
(Report on Providing Service by Zip Code)**

Reporting Requirement j requires all TNCs to produce both raw trip data by zip code as well as information aggregated by zip code. In response, Rasier-CA produced two tables:

- The “Share of Activity by ZIP Code Tabulation Area Out of All California”; and
- “Percent Completed Out of Requested Within ZIP Code Tabulation Area.”

(Exhibit 10 at 15.) Rasier-CA argues that the Commission and SED can “derive from these tables all the information needed to assess and determine the zip codes in which Rasier-CA most frequently operates, and the zip codes from which rides are most frequently accepted.” (*Id.*) According to Rasier-CA, by reviewing what Rasier-CA terms “voluminous responsive data,”<sup>64</sup> the Commission and SED will be able to fulfill the policy objectives of Reporting Requirement j.

We reject Rasier-CA’s argument that it has substantially complied with Reporting Requirement j. Data presented in table form and the specific trip data organized by zip code in the suggested template are neither identical nor substantially similar concepts, and presenting one does not comply (substantially

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<sup>64</sup> Rasier-CA’s Post-Hearing Opening Brief at 10.

or otherwise) with Reporting Requirement j. This salient fact distinguishes *Beasley* from the instant action in that in *Beasley*, defendants were endeavoring to provide the information required by OP 1 and 4, rather than by providing tables and expecting Commission staff to ferret through them for the applicable data and then populate the template. Thus, presenting data from which the required reporting data may be derived does not satisfy the actual reporting requirement. The other TNCs understood these separate requirements and provided the Commission with the information as required in Reporting Requirement j.

Rasier-CA's efforts are more akin to discovery dumps of thousands of documents on an adversary, a practice that is disfavored in California. For example, in *Kayne v. Grande Holdings Ltd.* (2011) 198 Cal.App.4th 1470, 1476, Grande produced 90,600 pages of documents, and plaintiffs had to hire three attorneys to organize the documents by category and date. Plaintiffs filed a motion to recover \$74,809 in fees and costs which the court granted as compensation for Grande's willful abuse of the discovery procedure and for failing to comply with Code of Civil Procedure § 2023.010. We find the *Kayne* decision instructive. Neither the Commission nor SED should have to sort through the voluminous data to find the information responsive to Reporting Requirement j.

Similarly, in *Person v. Farmers Insurance Group of Companies* (1997) 52 Cal.App.4th 813, 818, in which the trial court sanctioned a health care practitioner who failed to comply with the terms of a deposition subpoena, the Court upheld the sanctions, reasoning:

However, the health care provider may not avoid the mandate of court process by not preparing such a record when the raw data is available to do so. When billing records or “itemized statements” are requested they should be produced if: (1) the raw data which would support such a statement exist; (2) all that is required to produce the billing statement is a compilation of existing data; and (3) preparation of the compilation would not be unduly burdensome or oppressive.

Here, there is no question that Rasier-CA has the raw data regarding service by zip code that the Commission has ordered. Rasier-CA can manipulate the raw data to provide the Commission with the categories of information required by Reporting Requirement j in the reporting template that SED posted online for all TNCs to comply with. And Rasier-CA has not established that the completion of such a task would be unduly burdensome or oppressive.

Rasier-CA’s suggestion that Commission staff simply review the voluminous documents also runs afoul of the California Discovery Act’s prohibition – which we use as a guide - against referring to a set of documents or testimony without identifying, specifically, how and which documents are responsive to the production demand. (*See Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 293-294; and *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-784 [“Answers must be complete and responsive. Thus, it is not proper to answer by stating, ‘See my deposition,’ ‘See my pleading,’ or ‘See the financial statement.’”]) The Commission expects a regulated utility to be as equally forthcoming in responding to a Commission order as it would when faced with a discovery request in a superior court proceeding where the requirements of the California Discovery Act apply.

But before leaving the issue of substantial compliance, we must also address Rasier-CA’s subsequent February 5, 2015, production of zip code

information to determine if the totality of Reporting Requirement j has been substantially complied with. We answer this question in the negative as to the remaining separate requirement that each TNC provide information on the concomitant date, time and zip code of each ride that was subsequently accepted or not accepted (*i.e.* of the driver at the time it accepts or declines a ride request). As SED points out, this is a separate reporting requirement in Reporting Requirement j. (Exhibit 2, Attachment C [SED's deficiency letter dated October 6, 2014]; SED's Response to Rasier-CA's Motion to Set Aside Submission and Reopen the Record in Order to Show Cause in Rulemaking 12-12-011 at 3.) As such, compliance with one portion of a reporting requirement does not amount to substantial compliance—or any compliance for that matter—with a separate reporting requirement (*i.e.* concomitant dates, times, and zip codes of each ride subsequently accepted or not accepted by the driver; and the amounts paid or donated per trip).

#### **4.5. Contempt and Determination of Fine**

In conclusion, we find, beyond a reasonable doubt, that Rasier-CA has failed and refused to comply with the remaining requirements in Reporting Requirements g, j, and k, as identified above. As a result, Rasier-CA is in contempt for violating the reporting requirements set forth in D.13-09-045.

We further find that none of the defenses that Rasier-CA advanced are legally sound and they do not cause us to reconsider the finding of contempt. Rasier-CA shall pay \$1,000.00 pursuant to Pub. Util. Code § 2113, which states that a finding of contempt: "is punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by a court of record." In superior court, pursuant to Code of Civil Procedure § 1219(a), the maximum monetary civil penalty for a single act of contempt is \$1,000.00.

But the Commission is not limited to fining Rasier-CA \$1,000.00. Pub. Util. Code § 2113 states that the remedy allowed “does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition there.” In other words, the findings made here for Rasier-CA’s contempt, can also be utilized by the Commission to impose additional fines for violating Rule 1.1. We therefore discuss the legal propriety of imposing additional fines on Rasier-CA.

**5. By Disobeying D.13-09-045’s Reporting Requirements, Rasier-CA Violated Rule 1.1 of the Commission’s Rules of Practice and Procedure.**

Rule 1.1 of the Commission’s Rules of Practice and Procedure States:

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

**5.1. Burden of Proof**

The burden of proof for establishing a Rule 1.1 violation is not as stringent as the burden of proof for establishing contempt. The Commission has determined that a person subject to the Commission’s jurisdiction can violate Rule 1.1 without the Commission having to find that the person intended to disobey a Commission Rule, Order, or Decision. Instead, in D.01-08-019, the Commission ruled that intent to violate Rule 1.1 was not a prerequisite but that “the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation.” Thus, as the Commission later reasoned in D.13-12-053, where there has been a “lack of

candor, withholding of information, or failure to correct information or respond fully to data requests,” the Commission can and has found a Rule 1.1 violation.<sup>65</sup> This standard was recently affirmed in *Pacific Gas and Electric Company v. Public Utilities Commission* (2015) Cal.App.LEXIS 512. The party claiming the violation must establish that fact “by a preponderance of the evidence.”<sup>66</sup>

## 5.2. Rasier-CA Violated Rule 1.1

As we have established, *supra*, in Section 3 of this decision, Rasier-CA failed to comply with the remaining requirements in Reporting Requirements g, j, and k. First, Rasier-CA was aware of information responsive to Reporting Requirement g but tried to argue that its app had not yet been updated to track requests for accessible vehicles. Second, Rasier-CA elected to withhold trip-data information in violation of Reporting Requirement j by not providing it in the form required by D.13-09-045. Rasier-CA also violated Reporting Requirement j by not providing trip-fare information. Third, Rasier-CA has failed to provide

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<sup>65</sup> *Final Decision Imposing Sanctions for Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure* at 21. See also D.09-04-009 at 32, Finding Of Fact 24 [Utility was “subject to a fine for its violations, including noncompliance with Rule 1.1, even if the violations were inadvertent...”; D.01-08-019 at 21 Conclusion Of Law 2 [“The actions of Sprint PCS in not disclosing relevant information concerning NXX codes in its possession in the Culver City and Inglewood rate centers caused the Commission staff to be misled, and thereby constitutes a violation of Rule 1.”]; D.94-11-018, (1994) 57 CPUC 2d, at 204 [“A violation of Rule 1 can result from a reckless or grossly negligent act.”]; D.93-05-020, (1993) 49 CPUC 2d 241, 243 [citing to Rule 1 and Pub. Util. Code § 315 for the proposition that “all public utilities subject to our jurisdiction...are under a legal obligation to provide the Commission with an accurate report of each accident[.]...Withholding of such information or lack of complete candor with the Commission regarding accidents would of course result in severe consequences for any public utility.”]; and D.92-07-084, (1992) 45 CPUC 2d 241, 242 [“Therefore, by failing to provide the correct information in its report, and in not informing the Commission of the actual assignment, Southern California Gas & Electric Company (SoCalGas) misrepresented and misled the Commission....By behaving in such a manner, SoCalGas violated Rule 1.”].

<sup>66</sup> 49 CPUC2d at 190, citing to D.90-07-029 at 3-4.

the remaining information required by Reporting Requirement k. By doing so, Rasier-CA failed to comply with the laws of this state and further misled this Commission by an artifice or false statement of law by asserting multiple legal defenses that were unsound. Such conduct warrants the imposition of penalties or fines.<sup>67</sup>

**6. By Disobeying D.13-09-045's Remaining Reporting Requirements in Violation of Rule 1.1, Rasier-CA is Subject to Penalties and/or Fines Pursuant to Pub. Util. Code §§ 2107 and 5411.**

Pub. Util. Code § 2107 states:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

Similarly, with respect to TCPs, Pub. Util. Code § 5411 provides that a TCP that violates a Commission order is subject to a fine:

Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the

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<sup>67</sup> Similarly, in a superior court action, we note that it is appropriate for a court to impose sanctions where the losing party's objections to discovery are without substantial justification, making the discovery responses evasive. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1281, and 1285-1292 [trial court imposed \$6,632.50 for interposing objections that were lacking in legal merit and were without justification].)

commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

The Commission has broad authority to impose fines and penalties on persons subject to the Commission's jurisdiction. In *Pacific Bell Wireless, LLC v. Public Utilities Commission of the State of California* (2006) 140 Cal.App.4th 718, 736. The Court, citing the California Supreme Court's decision of *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905-906, spoke to the Commission's broad powers:

The Commission is a state agency of constitutional origin with far-reaching duties, functions and powers. The Constitution confers broad authority on the commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. The Commission's powers, however, are not restricted to those expressly mentioned in the Constitution: The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission.

As part of the expansive authority, the courts have recognized that the Commission has the authority to impose fines directly on public utilities without the need to first commence an action in Superior Court. (140 Cal.App.4th, at 736.) Instead, the Commission has determined that it need only commence an action in superior court to collect unpaid fees. (*Id.*, citing to *Order Denying Rehearing of Decision 99-11-044* (Mar. 2, 2000) Dec. No. 00-03-023 [2004 Cal.P.U.C. Lexis 127,

\*6-7]; *Re Communications TeleSystems International* (1997) 76 Cal.P.U.C.2d 214, 219-220, 224, fn. 7; *Toward Utility Rate Normalization (TURN) v. Pacific Bell* (1994) 54 Cal.P.U.C.2d 122, 124.) The Commission's interpretation of its own statutory authority should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (140 Cal.App.4th, at 736, citing *PG&E Corporation v. Public Utilities Commission* (2004) 118 Cal.App.4th 1174, 1194.)

We need not decide if the Commission is limited to the monetary penalty limit of \$50,000 per offense provided by Pub. Util. Code § 2107, or the monetary fine limit of \$5,000 per offense provided by Pub. Util. Code § 5411, when a TCP violates Rule 1.1, since we are electing to impose the maximum fine amount of \$5,000 per offense. We do, however, consider the criteria that have been articulated for Pub. Util. Code § 2107 as they are helpful in assessing the severity of the fine to impose on a TCP such as Rasier-CA. (*See* Resolution ALJ-261 at 6, wherein the Commission, in affirming, in part, a fine against the TCP, Surf City Shuttle, stated: "In determining whether to impose a fine and, if so, at what level, the Commission historically considers five factors, namely, the severity of the offense, the carrier's conduct, the financial resources of the carrier, the role of precedent, and the totality of circumstances in furtherance of the public interest.")

### **6.1. Burden of Proof**

When there is a Rule 1.1 violation, a fine "can be imposed under § 2107." (*See* 57 CPUC 2d at 205.) Thus, the same preponderance of the evidence standard necessarily applies.

That lesser standard is easily met. It is beyond dispute that Rasier-CA failed to comply with D.13-09-045 when it failed to produce the remaining information required for Reporting Requirements g, j, and k. That failure

violated Rule 1.1 which, in turn, has triggered the Commission's authority to issue fines and penalties.

Further, Pub. Util. Code § 2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the Commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

Similarly, pursuant to Pub. Util. Code § 5415:

Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

The Commission has relied on these statutory provisions to assess fines for each day that a utility is in violation of a Commission order or law.<sup>68</sup> Without question, the Commission's ability to impose penalties and fines on public utilities and TCPs is supported by the plain reading of Pub. Util. Code §§ 2107 and 5411.

## **6.2. Criteria for the Assessment of the Size of a Rule 1.1 and Pub. Util. Code § 2107 Fine**

D.98-12-075 and Public Utilities Code Sections 2107-2108 provide guidance on the application of fines.<sup>69</sup> As stated in D.98-12-075, two general factors are

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<sup>68</sup> See, e.g., Resolution ALJ-261 at 5-6 (discussing Pub. Util. Code § 5414.5 and 5415, noting that "with each day of a continuing violation constituting a separate violation;" and Carey, D.98-12-076, 84 CPUC2d 196, OP 1 (1998); D.98-12-075, 1998 Cal. PUC LEXIS 1016, \*56 (discussion of the policy behind daily fines and affirming that "[f]or a "continuing offense," Public Utilities Code § 2108 counts each day as a separate offense.").

<sup>69</sup> D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to

*Footnote continued on next page*

considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility. In addition, the Commission considers the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent. (D.98-12-075, mimeo at 34-39.)<sup>70</sup> We discuss the specific criteria and determine below its applicability to Rasier-CA's conduct.

### 6.2.1. Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.<sup>71</sup>

- **Physical harm:** The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
- **Economic harm:** The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
- **Harm to the Regulatory Process:** A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.

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these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. (*Mimeo* at 34-35.)

<sup>70</sup> In deciding the amount of a penalty, the Commission also considers the sophistication, experience and size of the utility; the number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense. (*See* D.98-12-076, *mimeo* at 20-21.) These principles are distilled into those identified in D.98-12-075.

<sup>71</sup> 1998 Cal. PUC LEXIS 1016 at 71-73.

- **The number and scope of the violations:** A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

Rasier-CA's violation of Rule 1.1 harmed the regulatory process by failing to produce the required information to the Commission which, in turn, frustrates the Commission's ability to access the available data to evaluate the impact of the TNC industry on California passengers. As this Commission stated in D.98-12-075, "such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."<sup>72</sup>

#### **6.2.2. Criterion 2: Conduct of the Utility**

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors:<sup>73</sup>

- **The Utility's Actions to Prevent a Violation:** Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.
- **The Utility's Actions to Detect a Violation:** Utilities are expected to diligently monitor their activities. Deliberate,

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<sup>72</sup> 84 CPUC2d 155, 188; See also Resolution ALJ-277 Affirming Citation No. ALJ-274 2012-01-001 Issued to Pacific Gas and Electric Company for Violations of General Order 112-E at 8 (April 20, 2012).

<sup>73</sup> 1998 Cal. PUC LEXIS 1016 at 73-75.

as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.

- **The Utility's Actions to Disclose and Rectify a Violation:** Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Here, Rasier-CA had the ability all along to comply with D.13-09-045's Reporting Requirements g, j, and k yet declined to do so by interposing a series of unsound legal arguments and objections.

### **6.2.3. Criterion 3: Financial Resources of the Utility**

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors:<sup>74</sup>

- **Need for Deterrence:** Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.
- **Constitutional Limitations on Excessive Fines:** The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

As we will explain, Rasier-CA has the financial wherewithal to pay a substantial fine.

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<sup>74</sup> 1998 Cal. PUC LEXIS 1016 at 75-76.

While Rasier-CA is the licensed TNC, Uber is also subject to the Commission's jurisdiction as it is helping to facilitate the TNC services for Rasier-CA.<sup>75</sup> This raises the question of whether a parent (Uber) is responsible for the actions of its subsidiary (Rasier-CA) and, if so, is it appropriate to look at Uber's revenues as a whole and not just Rasier-CA's revenues in order to calculate an appropriate penalty.

We answer this question in the affirmative based on the legal theories of parent/subsidiary and alter-ego liability. Such a result was affirmed in *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, wherein Ernest Hahn, Inc., a nationwide developer of regional shopping centers, was found to be the alter ego of its wholly owned subsidiary, Hahn Devcorp, a developer of community and neighborhood shopping centers. Both entities were sued for breach of contract and fraud, and the jury heard evidence that the parent and subsidiary companies had net values of \$497 million and \$4.1 million respectively. The Court of Appeal affirmed the finding that Hahn and Devcorp had formed a single enterprise, thus making it appropriate for finding that Devcorp was the alter ego of Hahn for purposes of establishing liability and determining damages.<sup>76</sup>

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<sup>75</sup> Uber is also subject to the Commission's jurisdiction and has been required to demonstrate that it carries commercial liability insurance. (D.13-09-045 at 74, OP 13.) The nature of Uber's operations and its relationship with its subsidiaries has been designated as part of the scope of Phase II of this proceeding, and Uber has been ordered to answer questions and produce documents related to this subject matter (Assigned Commissioner and Assigned Administrative Law Judge's Ruling dated June 3, 2015 at 2-5).

<sup>76</sup> See also *Pan Pacific Sash & Door Co v. Greendale Park, Inc.* (1958) 166 Cal.App.2d 652, 658-659 (Court of Appeal ruled that "the trial court was warranted in concluding, as it did, that each corporation was but an instrumentality or conduit of the other in the prosecution of a single venture[.]")

What these decisions demonstrate is that if the subsidiary is a mere agency or instrumentality of the parent, then the parent is responsible for the actions of the subsidiary. (*Northern Natural Gas Co. v. Superior Court* (1976) 64 Cal.App.3d 983, 994.) A persuasive factor in this determination is if there is relatively complete management and control by the parent of the subsidiary. (See *Marr v. Postal Union Life Insurance Company* (1940) 40 Cal.App.2d 673, 681.) Other factors for deciding if a subsidiary is the alter ego or conduit of the parent include: (1) is the subsidiary engaged in no independent business; (2) does the same attorney represent both the parent and the subsidiary; (3) the uses of common offices; and (4) admission of an agency relationship between the parent and subsidiary. (*Marr, supra*, 40 Cal.App.2d at 682.) While the claims usually arise out of contract or tort claims, we find the principles applicable here as the actions of Uber and Rasier-CA are interchangeable, persuading us that it is appropriate to consider the revenues of Uber in assessing the penalty. Some background regarding the Uber corporate model is in order to explain why it is appropriate to consider both the value of Rasier-CA and Uber in determining an appropriate penalty.

#### **6.2.3.1. The Corporate Relationship Between Uber, Rasier, LLC, and Rasier-CA**

From a macro perspective, the corporate structure seems straightforward – there is Uber, Rasier, LLC, and Rasier-CA, the latter two entities being subsidiaries of Uber.<sup>77</sup> If a California transportation provider (either TCPs or TNCs) wishes to collaborate with Uber to provide transportation service, it must execute the Rasier Software Sublicense & Online Services

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<sup>77</sup> Colman Decl. ¶ 7 (*O'Connor*); and Exhibit 10 at 6 (“Rasier [CA]’s parent, Uber Technologies, Inc.”)

Agreement with Rasier-CA.<sup>78</sup> Non-California transportation providers execute the Rasier Software Sublicense & Online Services Agreement with Rasier, LLC.<sup>79</sup>

When one delves into how Uber began its operations in San Francisco, California in 2009,<sup>80</sup> and when we analyze the relationship between Uber and its subsidiaries, the interconnection between Uber and Rasier-CA becomes clear, making it appropriate as a matter of law to treat Uber and Rasier-CA as one in the same for purposes of assessing fines and penalties.<sup>81</sup> Without any regulatory permission, Uber began offering rides in California to individuals in need of vehicular transportation who had subscribed to Uber's Terms of Service.<sup>82</sup> These passengers could then log in to the Uber software application on their smartphone, request a ride, and be matched with an available Uber driver.<sup>83</sup> The cost of the ride is charged to the passenger's credit card which is on file with Uber.<sup>84</sup> Uber reserves the right to determine the ultimate price of the ride.<sup>85</sup>

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<sup>78</sup> Colman Decl. ¶ 6, Exhibit A (*National*); Order Granting at 2, footnote 2 (*O'Connor*).

<sup>79</sup> Colman Decl. ¶ 6, Exhibit A (*National*).

<sup>80</sup> Colman Decl. ¶ 3 (*O'Connor*).

<sup>81</sup> We note in *O'Connor*, Judge Chen states: "Uber never materially distinguishes between itself and Rasier or argues that Rasier's separate corporate status is relevant to this litigation." (Order Denying, at 3, footnote 4.)

<sup>82</sup> See Citation for Violation of PUC dated November 13, 2012, addressed to Uber; Colman Decl. ¶ 8, Exhibit B (*National*).

<sup>83</sup> Colman Decl. ¶ 4 (*O'Connor*).

<sup>84</sup> *Id.* ¶ 5 ("As part of that process, passengers place a credit card number on file with Uber, which eliminates the need for cash payments and permits Uber to satisfy its obligation to manage passengers' payments to transportation providers.")

Once the Commission became aware of these unauthorized operations, on November 13, 2012, the Commission's Consumer Protection and Safety Division (CPSD, now known as SED) issued a citation to Uber for violation of Public Utilities Code.<sup>86</sup> As an interim solution while the Commission resolved the instant rulemaking proceeding, Uber's operations were permitted in California pursuant to a settlement agreement with SED.<sup>87</sup>

On September 22, 2013, this Commission issued D.13-09-045, in which the Commission distinguished between Uber and UberX, stating that the former "is the means by which the transportation service is arranged, and performs essentially the same function as a limousine or shuttle dispatch office."<sup>88</sup>

Rasier-CA's Certificate of Formation was filed with the Delaware Secretary of State on September 6, 2013.<sup>89</sup> On September 19, 2013, Rasier-CA filed an Application to Register a Foreign Limited Liability Company with the California Secretary of State.<sup>90</sup> Travis Kalanick is listed on Rasier-CA's Statement of Information filed with the California Secretary of State as the sole managing

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<sup>85</sup> Colman Decl. Exhibit B ("Payment Terms" states that "The Company reserves the right to determine final prevailing pricing[.] (*National*); Colman Decl. at ¶ 11 ("Uber incentivizes use of the Uber App during periods of peak demand by increasing rates ("surge pricing"). The idea is that additional drivers will choose to log in to the Uber App due to the increased earnings potential from higher fares[.]" (*O'Connor*.)

<sup>86</sup> D.13-09-045 at 4, footnote 4.

<sup>87</sup> *Id.* (Term Sheet for Settlement Between the Safety and Enforcement Division of the California Public Utilities Commission and Uber Technologies, Inc. RE Case PSG-3018, Citation F-5195, executed by SED and Uber on January 24, 2013 and January 30, 2013, respectively.

<sup>88</sup> *Id.* at 12.

<sup>89</sup> State of Delaware Limited Liability Company Certificate of Formation.

<sup>90</sup> State of California Secretary of State Certificate of Registration, dated September 20, 2013.

partner, and as Uber's CEO on the California Secretary of State database.<sup>91</sup> Without deciding whether Uber Technologies, Inc., should be classified as a TCP, the Commission nevertheless reasoned that "Uber is not exempt from the Commission's jurisdiction over charter-party carriers."<sup>92</sup>

Additionally, the Commission found that UberX was a charter party carrier of passengers and was subject to the Commission's jurisdiction as a TNC.<sup>93</sup> Uber disputed this conclusion that UberX was a transportation provider. Instead, it argued that UberX "does not designate a specific transportation service, but rather it is one of the several classes of car that users of the Uber App may request. A car on the UberX platform can be driven by either a TCP holder providing a regulated TCP transportation service or a non-TCP holder providing peer-to-peer prearranged transportation service."<sup>94</sup> Uber claimed that its subsidiary, Rasier, LLC "contracts with non-TCP holders who use the Uber App to receive requests from users and provide peer-to-peer prearranged transportation service. Accordingly, Uber asserted that the Commission should regulate Rasier, LLC as a TNC, but only if and when Rasier, LLC applies to the Commission to become a TNC."<sup>95</sup>

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<sup>91</sup> [www.sos.ca.gov](http://www.sos.ca.gov) (Corp # C3318029).

<sup>92</sup> D.13-09-045 at 12.

<sup>93</sup> *Id.* at 75, OP 14 ("UberX meets the Transportation Network Company [TNC] definition and must apply for a TNC license.") See also Finding of Fact 29.

<sup>94</sup> Application of Uber Technologies, Inc. for Rehearing of Decision 13-09-045, 4, footnote 11.

<sup>95</sup> *Id.*

Uber's words were prophetic since in January 2014, Rasier-CA, rather than UberX, submitted an application for TNC authority.<sup>96</sup> The e-mail address on the application is [rasier-ca@uber.com](mailto:rasier-ca@uber.com).<sup>97</sup> Control of Rasier-CA, is held by Rasier, LLC.<sup>98</sup> Rasier-CA states it is affiliated with Rasier, LLC and Uber.<sup>99</sup> The proof of insurance that was provided identifies the named insured as Rasier, LLC, Rasier-CA, Rasier-DC, LLC, and Rasier-PA, LLC.<sup>100</sup>

On April 7, 2014, the Commission issued Permit No. TCP0032512-P to Rasier-CA. Rasier-CA has identified itself as Uber's subsidiary.<sup>101</sup>

Nearly all pleadings in this proceeding on behalf of Uber, Rasier LLC and Rasier-CA have been filed by the same law firm – Davis Wright Tremaine LLP.

#### **6.2.3.2. Uber's Financial Viability is Dependent on Rasier-CA**

Despite Uber's attempt to distinguish itself from the transportation services by recasting itself as a technology company or a wireless service, the facts are unrefuted, and this Commission has found, that Uber is providing a transportation service as a facilitator. Even Uber's own advertisements and

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<sup>96</sup> See Public Utilities Commission of the State of California Application for Transportation Network Company Authority, PSG 32512.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> James River Insurance, 12/21/2014 to 03/01/2016, policy number CA 436100CA-0.

<sup>101</sup> Verified Statement of Rasier-CA, Responding to Order to Show Cause in Rulemaking 12-12-011, 6 ("Rasier's parent, Uber Technologies, Inc.") See also Comments of Uber Technologies, Inc. on Proposed Decision Modifying Decision 13-09-045 at 3 ("Uber Technologies, Inc., on behalf of its TNC subsidiary, Rasier[.]")

actions undercut its argument that it is not a transportation company. A review of its website and advertising materials reveals that Uber has referred to itself as an “On-Demand Car Service” and utilizes the tagline “Everyone’s Private Driver.”<sup>102</sup> Uber even owns a U.S. trademark on “Everyone’s Private Driver.”<sup>103</sup>

In fact, revenues derived from the transportation services provided by Uber’s subsidiaries, such as Rasier-CA, are the lifeblood of Uber’s operations and its continued financial viability. On its website, Uber claims that it “has grown to millions of trips per day in nearly 300 cities in 55 countries.”<sup>104</sup> As discussed above, at the conclusion of the trip, the rider’s credit card is charged and the payment from the rider is split between the driver and Uber.<sup>105</sup> Each ride, then, results in increased revenues to Uber. In contrast, Uber does not make money off its Uber App as it is not a software that is sold “in the manner of a typical distributor.”<sup>106</sup> Uber itself has referred to its software as a “free, easy-to-use smartphone application.”<sup>107</sup> In sum, Uber only makes money if the drivers signing up with Rasier-CA actually transport passengers.

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<sup>102</sup> Order Denying at 4 (*O’Connor*).

<sup>103</sup> *Id.*

<sup>104</sup> <http://blog.uber.com>

<sup>105</sup> Uber’s Comments on OIR at 2-3 (“At the completion of the ride, as the agent of the Partner/Driver, Uber processes payment (via use of a third party credit card payment processing company) for the transportation service provided. The User immediately receives a receipt from Uber via email. Uber forwards the fare, less Uber’s commission, to the Partner.Driver.”); Colman Decl. Exhibit A at 4 (“Service Fees”) (*National Federal of the Blind*). Order Denying at 11 (*O’Connor*).

<sup>106</sup> Order Denying at 5(*O’Connor*).

<sup>107</sup> Uber’s Comments on OIR at 2.

### 6.2.3.3. Uber's Control of Rasier-CA's Transportation Operations

Uber's control over the transportation services provided by Rasier-CA is extensive. The evidence is undisputed that:

- TNC drivers who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber or a Transportation Provider Service Agreement with Rasier, LLC, an Uber subsidiary;<sup>108</sup>
- Any passenger wishing transportation service with Rasier-CA via the Uber App must download the passenger version of the Uber App to a smartphone and create an account with Uber;<sup>109</sup>
- Uber ensured that "its TNC subsidiary Rasier LLC (together with Rasier-CA, LLC) procured a commercial insurance policy with \$1 million in coverage per incident;"<sup>110</sup>
- Wayne Ting, Uber's General Manager, verified Rasier-CA's Verified Statement;<sup>111</sup>
- Uber sets the fares it charges riders unilaterally;<sup>112</sup>
- Uber bills its riders directly for the entire amount of the fare charged;<sup>113</sup>

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<sup>108</sup> Colman Decl. at ¶ 7 (*O'Connor*).

<sup>109</sup> *Id.* at ¶ 5.

<sup>110</sup> Uber's Comments on ACR at 1, dated April 7, 2014.

<sup>111</sup> Exhibit 10.

<sup>112</sup> Colman Decl. Exhibit 1 thereto ("Payment Terms") (*O'Connor*).

<sup>113</sup> *Id.*

- Uber claims a proprietary interest in its riders, and prohibits its drivers from answering rider queries about booking future rides outside the Uber app, or otherwise soliciting rides from Uber riders;<sup>114</sup>
- Uber exercises control over the qualification and selection of its drivers;<sup>115</sup>
- Uber terminates the accounts of drivers who do not perform up to Uber standards; and<sup>116</sup>
- Uber deactivates accounts of passengers for low ratings or inappropriate conduct.<sup>117</sup>

In sum, we conclude that Uber's control over Rasier-CA's operations are so pervasive that Rasier-CA should be deemed as the mere agent or instrumentality of Uber, making it appropriate for the Commission to consider both companies' revenues for penalty purposes.<sup>118</sup>

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<sup>114</sup> Colman Decl. Exhibit 1 thereto (License Grant & Restrictions, and Intellectual Property Ownership (*O'Connor*); Colman Decl. Exhibit A ("You understand that you shall not during the term of this Agreement use your relationship with the Company...to divert or attempt to divest any business from the Company that provides lead generation services in competition with the Company or Uber." (*National*)).

<sup>115</sup> Colman Decl. Exhibit A (Performance of Transportation Services (*National Federation of the Blind*)).

<sup>116</sup> Colman Decl. at ¶ 9 (*O'Connor*).

<sup>117</sup> *Id.*

<sup>118</sup> Such a conclusion is also supported by Commission precedent in instances where an alter-ego finding was not expressly made. (See e.g. D.04-12-058, *Order Modifying and Denying Rehearing of Decision (D.) 04-09-062* at 18 ["The record in this proceeding also reflected that Cingular reported corporate revenues of \$14.746 billion for year-end 2002, that Cingular had approximately 22 million customers at that time, and that Cingular's three million California customers constituted 14% of Cingular's customer base, and likely 14% of Cingular's revenues as well."]; Decision 02-12-059, *Opinion Finding Violations and Imposing Sanctions* at 56 ["Thus, an approximate \$38 million fine is reasonable in this case when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about

*Footnote continued on next page*

#### 6.2.3.4. Rasier-CA's Revenues

Rasier-CA's reported gross revenues for 2014 were in excess of \$40 million.<sup>119</sup>

#### 6.2.3.5. Uber's Revenues

Since Uber is not a publically traded company, we do not have access to filings that we normally would be available for a publically traded company that would give us national revenue numbers from a source from which we may take official notice. Yet we can glean some useful information from the comments Uber's CEO, Travis Kalanick, has made on the company's website. In a June 6, 2014 post entitled "4 YEARS IN," Mr. Kalanick states that Uber has raised "\$1.2 billion of primary capital at a \$17 billion pre-money valuation."<sup>120</sup> Mr. Kalanick continued and commented on the growth of the company:

It's remarkable that it was only four years ago this week Uber started operations in SF, connecting residents with the safest, most reliable way to get around a city. Today, we are operating in 128 cities in 37 countries around the world with hundreds of thousands of transportation providers and millions of consumers connecting to our platform.<sup>121</sup>

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\$92 million.]; and Decision 04-09-023 *Opinion Authorizing Transfer of Control and Imposing a Fine at 10*, footnote 12 ["The Commission has previously considered the finances of utility parent companies, affiliates, and other non-regulated entities when setting fines, provided that such information is cognate, and germane to the fine. (D.04-04-017, *mimeo.*, p. 9; D.04-04-016, *mimeo.*, p. 19; D.03-08-058, *mimeo.*, p. 12; and D.03-05-033, *mimeo.*, p. 10."].)

<sup>119</sup> Public Utilities Commission Transportation Reimbursement Account Revenue Detail.

<sup>120</sup> <http://blog.uber.com/4years>.

<sup>121</sup> *Id.*

In a more recent blog, Mr. Kalanick states that Uber has “grown to millions of trips per day in nearly 300 cities in 55 countries.”<sup>122</sup> If we were to assume that each ride costs \$10, Uber’s gross annual revenue would be \$3.6 billion. (1 million rides per day × \$10 = \$10 million × 30 days = \$300 million × 12 months = \$3.6 billion.) We also know that Uber takes a share of the cost of each ride the TNC driver agrees to provide. In the Rasier Software Sublicense & Online Services Agreement, there is a section entitled “Rasier’s Fee” which states: “In exchange for your access to and use of the Software and Service, including the right to receive the Requests, you agree to pay to the Company a fee for each Request accepted as indicated in the Service Fee Schedule.”<sup>123</sup> While we do not know the precise fee, other TNCs take approximately 20% of the ride fare charged to the passenger’s credit card on file.<sup>124</sup> Assuming Uber utilizes a similar 80/20 fare split, Uber’s 20% share of the \$3.6 billion in gross revenues would be \$720 million annually.

#### 6.2.4. Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:<sup>125</sup>

- **The Degree of Wrongdoing:** The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

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<sup>122</sup> <http://blog.uber.com>.

<sup>123</sup> Colman Decl., Exhibit A (*National*).

<sup>124</sup> See Exhibit C, 52, and Exhibit E, 83, to the Workshop Brief filed on April 3, 2013 by TPAC.

<sup>125</sup> 1998 Cal. PUC LEXIS 1016, 76.

- **The Public Interest:** In all cases, the harm will be evaluated from the perspective of the public interest.

Rasier-CA's actions impeded the Commission's staff from exercising its obligations to analyze the required data so it could advise the Commission if the regulations imposed on the TNC industry were protecting the public interest. Since Rasier-CA has a sizeable market share of the TNC operations in California, the absence of Respondent's data created a significant hole in SED's impact analysis. In considering the totality of circumstances and degree of wrongdoing in this case, we conclude that a fine for the entirety of the time, discussed *infra*, that Rasier-CA violated D.13-09-045 is appropriate.

#### **6.2.5. Criterion 5: The Role of Precedent in Setting the Fine or Penalty**

In D.98-12-075, the Commission held that any decision that imposes a fine or penalty should: (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.<sup>126</sup>

##### **6.2.5.1. Calculating the Fine or Penalty Based on a Continuing Offense**

As precedent for considering the level of fines against Rasier-CA, we consider past Commission decisions involving Rule 1 violations that occurred over multiple days:

- *Cingular Investigation*, D.04-09-062 at 62 ("Section 2108 provides, in relevant part, that 'in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense. Both violations constitute

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<sup>126</sup> 1998 Cal. PUC LEXIS 1016, 77.

continuing offenses during the relevant time periods. Considering the record as a whole, we find that the penalty for each violation should be calculated on a daily basis.”); and Conclusion of Law (COL) 4 (“Pursuant to §§ 2107 and 2108 and Commission precedent, for the violations of law for the period January 1, 2000 to April 30, 2002 (849 days), Cingular should pay a penalty of \$10,000 per day, or \$8,490,000.”);

- *Qwest*, D.02-10-059 at 43, n. 43 (“Sections 2107 and 2108 address fines. According to § 2107, *Qwest* is liable for a fine of \$500 to \$20,000 for every violation of the Public Utilities Code or a Commission decision. Pub. Util. Code § 2108 provides that every violation is a separate and distinct offense, and in case of a continuing violation each day’s continuance constitutes a separate and distinct offense.”); and
- *SCE’s Performance-Based Ratemaking OII*, D.08-09-038 at 111 (“Finally, a fine of \$30 million is reasonable when viewed as an ongoing violation that should be subject to a daily penalty, as recommended by CPSD and used by the Commission in the case that was upheld in *Pacific Bell Wireless, LLC v. Pub. Util. Comm’n*. If SCE’s violations are viewed as daily violations that continued for seven years, then a \$30 million dollar fine equates to a daily penalty of just less than \$12,000 (\$30 million/7 years/365 days).”)

#### **6.2.5.2. Calculating the Fine or Penalty by Considering National and California Revenues**

An additional precedent we consider are past Commission decisions where a fine or penalty was imposed based on the revenues or equity of both a company’s national revenues and the California revenues:

- D.04-12-058, *Order Modifying and Denying Rehearing of Decision (D.) 04-09-062* at 18 [“The record in this proceeding also reflected that Cingular reported corporate

revenues of \$14.746 billion for year-end 2002, that Cingular had approximately 22 million customers at that time, and that Cingular's three million California customers constituted 14% of Cingular's customer base, and likely 14% of Cingular's revenues as well."]; and

- D.02-12-059, *Opinion Finding Violations and Imposing Sanctions* at 56 ["Thus, an approximate \$38 million fine is reasonable in this case when Qwest had total revenues for the year 2000 of \$11 billion, and its California residential long distance revenue for 2000 was about \$92 million."].)

### **6.2.5.3. Calculating the Fine or Penalty by Considering Revenues of both Parent and Subsidiary Companies**

The final precedents are those Commission decisions where fines or penalties were based on the revenues of both the parent and the subsidiary companies. (See e.g. D.04-09-023 *Opinion Authorizing Transfer of Control and Imposing a Fine* at 10, footnote 12 ["The commission has previously considered the finances of utility parent companies, affiliates, and other non-regulated entities when setting fines, provided that such information is cognate, and germane to the fine. (D.04-04-017, *mimeo.*, p. 9;<sup>127</sup> D.04-04-016, *mimeo.*, p. 19; D.03-08-058, *mimeo.*, p. 12;<sup>128</sup> and D.03-05-033, *mimeo.*, p. 10."<sup>129</sup>].)

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<sup>127</sup> "From this information, we conclude that WLN, through its parent new WCG, has the financial resources to pay a fine in the range normally applied by the Commission for violation of § 854(a). We will weigh this information accordingly when setting the amount of the fine."

<sup>128</sup> "[W]hile Applicants' California operations and revenues may be minimal, the parent companies involved with this indirect transfer of control have substantial financial resources to pay a fine for their violation of § 854(a)."

<sup>129</sup> "The Applicants have incurred significant losses in 2001, but their financial statements indicate health amounts of equity."

**6.3. Calculation of the Fine or Penalty**

**6.3.1. Rasier-CA's Position**

Rasier-CA claims that since it substantially complied with Reporting Requirement j, and complied with Reporting Requirements g and k, no fine should be imposed.

**6.3.2. SED's Position**

As of February 5, 2015, SED claims Rasier-CA has been out of compliance for 139 days. Multiplied by the recommended daily penalty of \$2,000 a day, the total recommended penalty is currently \$278,000.<sup>130</sup> SED also notes that if the Commission were to treat each of the fifteen failures to comply as a separate penalizing offense, the penalty could be \$3.72 million.<sup>131</sup>

**6.3.3. Discussion**

In view of Rasier-CA's conduct and the specious legal arguments it raised that we have addressed above, we believe that a fine much greater than the one proposed by SED should be imposed in order to deter such conduct. We treat each of the remaining five failures to comply as separate offenses for which a fine should be imposed, and we increase the daily rate to \$5,000 for each offense.

Based on the above precedents, we calculate Rasier-CA's fine as follows:

Reporting Requirement	What Remains Outstanding	Days Out of Compliance	Daily Fine Amount	Recommended Fine
g (Report on Accessibility)	The number and percentage	279 (from September 24, 2014 to	\$5,000	\$1,395,000

<sup>130</sup> SED's Opening Brief at 13-14.

<sup>131</sup> *Id.* at 15.

	of customers who requested accessible vehicles	June 30, 2015)		
g (Report on Accessibility)	How often the TNC was able to comply with requests for accessible vehicles	279 (from September 24, 2014 to June 30, 2015)	\$5,000	\$1,395,000
j (Report on Providing Service by Zip Code)	The concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted	284 (from September 19, 2014 to June 30, 2015)	\$5,000	\$1,420,000
k (Report on Problems with Drivers)	The cause of each incident	284 (from September 19, 2014 to June 30, 2015)	\$5,000	\$1,420,000
j (Report on Providing Service by Zip Code)	The amount paid or donated	284 (from September 19, 2014 to June 30, 2015)	\$5,000	\$1,420,000
<b>Subtotal</b>				<b>\$7,050,000</b>

We must also add to this subtotal the 138 days past the reporting deadline it took Rasier-CA to comply with Reporting Requirement j's demand for information by zip code in which each ride ended and the distance travelled and the date, time, and zip code of each request, both completed and not completed.

We assess this fine determination at a daily rate of \$2,000, resulting in a fine of \$276,000.

**Total fine: \$7,326,000.**

#### **7. Suspension of Rasier-CA's Authority to Operate as a TNC**

Rasier-CA's authority to operate as a TNC shall be suspended 30 days after the issuance of this decision. The authority shall remain suspended until all outstanding reporting requirements have been complied with and the assessed fine has been paid.

#### **8. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner. Robert M. Mason III is the assigned ALJ and the hearing officer for this adjudicatory OSC portion of this proceeding.

#### **Findings of Fact**

1. On September 19, 2013, the Commission adopted D.13-09-045, creating a new category of transportation charter party carrier (TCP) of passengers called Transportation Network Companies (TNCs).

2. D.13-09-045 set forth the various requirements that TNCs must comply with in order to operate in California.

3. Among other regulatory requirements, the Decision required TNCs to submit annual reports containing certain information. Specifically, the Decision states that:

- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a report detailing the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with requests for accessible vehicles.
- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety

and Enforcement Division a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid/donated. Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.

- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.

- One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the average and mean number of hours and miles each TNC driver spent driving for the TNC.
- TNCs shall establish a driver training program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. This program must be filed with the Commission within 45 days of the adoption of this decision. TNCs must report to the Commission on an annual basis the number of drivers that became eligible and completed the course.

4. On September 19, 2014, Rasier-CA submitted its annual report information to SED.

5. SED reviewed the information and found that Rasier-CA had failed to provide all of the information specified in the Decision. Specifically, Rasier-CA had failed to comply fully with Reporting Requirements g, j, and k.

6. Since September 19, 2014, SED has worked to obtain complete information as required by the Commission's Decision through the issuance of an additional data request dated October 6, 2014.

7. Rasier-CA provided its claimed confidential responses on October 10, 2014 and a DVD on October 20, 2014. SED reviewed these further responses and determined that SED has not received all of the information for Reporting Requirements g, j, and k ordered by D.13-09-045.

8. Rasier-CA provided its claimed confidential responses on October 10, 2014 and a DVD on October 20, 2014. (*Id.*) SED reviewed these further responses and determined that SED has not received all of the information ordered by D.13-09-045.

9. The OSC phase of this proceeding was determined to be adjudicatory.

10. On November 14, 2014, the assigned Administrative Law Judge (ALJ) issued a ruling ordering Rasier-CA to appear for hearing and to show cause as to why it should not be found in contempt, why penalties should not be imposed, and why Rasier-CA's license to operate should not be revoked or suspended for its failure to comply with D.13-09-045.

11. The November 14, 2014 ruling ordered Rasier-CA to address Rule 1.1 of the Commission's Rules of Practice and Procedure, as well as Pub. Util. Code §§ 701, 2107, 2108, 2113, 5411, 5415, 5378(a), and 5381.

11. On December 4, 2014, Rasier-CA filed its Verified Statement Responding to Order to Show Cause.

12. On December 4, 2014, Rasier-CA filed its Petition to Modify Decision 13-09-045.

13. On December 8, 2014, at 5:01 p.m., Rasier-CA served an Emergency Motion Requesting Deferral of Hearings. The assigned ALJ denied the Emergency Motion on December 8, 2014 at 7:13 p.m.

14. On December 9, 2014, SED filed its Verified Reply to Rasier-CA's Verified Statement Responding to Order to Show Cause.

15. On December 10, 2014, Rasier filed a Motion to strike Portions of the SED's Verified Reply.

16. On January 21, 2015, SED and Rasier-CA filed their respective post-hearing opening briefs.

17. On February 5, 2015, SED and Rasier-CA filed their respective post-hearing reply briefs.

18. On February 17, 2015, Rasier-CA filed its Motion to Set Aside Submission and Reopen the Record in Order to Show Cause in Rulemaking 12-12-011.

19. On February 19, 2015, the assigned ALJ granted the Motion and set a further briefing schedule.

20. On February 27, 2015, SED filed its Response to Rasier-CA's Motion to Set Aside Submission and Reopen the Record in Order to Show Cause in Rulemaking 12-12-011.

21. On March 6, 2015, Rasier-CA filed its Reply to SED's Response.

22. As of September 9, 2014, Uber, Rasier, LLC, and Rasier-CA, LLC had been sued by the National Federation of the Blind of California for discrimination against blind individuals who use service dogs.

23. The complaint alleges multiple instances, all before Rasier-CA's September 19, 2014 reporting date, where blind customers with service dogs claimed they were denied service by UberX drivers.

24. The Complaint also alleges that some of these customers complained to Uber about their treatment.

25. On September 24, 2014, Uber was served with the complaint.

26. On October 9, 2014, Uber entered into a stipulation with plaintiffs for additional time to file a responsive pleading.

27. On October 22, 2014, Uber filed a Motion to Dismiss National Federation of the Blind of California's complaint.

28. As of September 24, 2014, Uber, Rasier-CA's parent company, was aware of complaints by persons with disabilities regarding their claimed inability to take advantage of the TNC service provided by UberX. Rasier-CA, as Uber's wholly owned subsidiary, should have supplemented its September 19, 2014 report regarding Reporting Requirement g to include the above responsive information.

29. The other TNCs subject to the Commission's jurisdiction have complied with Reporting Requirements g, j, and k.

30. Uber has provided trip data similar to what is required by Reporting Requirement j to the mayor of Boston, Massachusetts, and to the New York Taxi and Limousine Commission.

31. To facilitate its transportation service, Uber licenses a software application service known as the Uber App which is used by TCP holders and TNC holders to generate leads to provide transportation services.

32. For TCP holders and TNC holders operating in California, the Software Sublicense & Online Services Agreement is executed with Rasier-CA.

33. Uber only makes money if the drivers signing up with Rasier-CA actually transport passengers.

34. All pleadings in this proceeding on behalf of Uber, Rasier, LLC and Rasier-CA have been filed by the same law firm – Davis Wright Tremaine LLP.

### **Conclusions of Law**

1. The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities as to matters of public accommodation, specified public transportation service, and travel service. The TNC service Rasier-CA provides can fit, at a minimum, within these definitions.

2. Persons with vision impairment are included within the ADA's definition of disability.

3. Rasier-CA is out of compliance with the remaining reporting requirements of Reporting Requirement g by not reporting on the instances of blind passengers with service dogs who were allegedly declined service by UberX drivers.

4. Rasier-CA remains out of compliance with the remaining reporting requirements of Reporting Requirement j since Rasier-CA's production did not

include information on the concomitant date, time and zip code of each ride that was subsequently accepted or not accepted (*i.e.* of the driver at the time they accept or decline a ride request), as well as fare information.

5. Pursuant to Pub. Util. Code § 5381, the Commission may supervise and regulate every charter party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

6. Pursuant to Pub. Util. Code § 5389, the Commission may have access at any time to a TCP's operations and may inspect the accounts, books, papers, and documents of the carrier.

7. The breath of Pub. Util. Code § 5381 and Pub. Util. Code § 5389 includes the power to require TNCs to provide information regarding fare information.

8. Rasier-CA is out of compliance with the remaining reporting requirements of Reporting Requirement k because Rasier-CA has not provided information on the cause of each incident.

9. Rasier-CA was aware of the September 14, 2014 reporting deadlines imposed by D.13-09-045.

10. Rasier-CA had the ability to comply with the outstanding information for Reporting Requirements g, j, and k.

11. Rasier-CA's failure to comply with the outstanding information for Reporting Requirements g, j, and k was willful (*i.e.* inexcusable).

12. Rasier-CA wrongfully characterizes this OSC proceeding as a discovery dispute with SED.

13. Compliance with a Commission's ordering paragraphs is mandatory, and compliance may not be excused by the Respondent's claimed lack of knowledge

as to why the information is needed or how the required information may be used.

14. The integrity of the regulatory process relies on the accurate and prompt reporting of information.

15. Rasier-CA fails to substantiate its claims that the data ordered by Reporting Requirements j and k are unduly burdensome, cumulative, and overly broad.

16. Rasier-CA has failed to substantiate its claim that strict compliance with Reporting Requirement j violates the fourth amendment.

17. Rasier-CA has failed to substantiate its claim that the data ordered by Requirement j is trade secret commercial information.

18. Rasier-CA has failed to substantiate its claim that the disclosure of trip data would amount an unconstitutional taking of a trade secret.

19. Rasier-CA has not substantially complied with the remaining requirements of Reporting Requirement j.

20. The evidence establishes, beyond a reasonable doubt, that Rasier-CA is in contempt for failing to comply with the remaining reporting requirements of Reporting Requirements g, j, and k.

21. The evidence establishes, by a preponderance of the evidence, that Rasier-CA has violated Rule 1.1 of the Commission's Rules of Practice and Procedure for failing to comply with the remaining reporting requirements of Reporting Requirements g, j, and k.

22. Rasier-CA should be fined \$1,000.00 for contempt.

23. Rasier-CA's conduct satisfies the criteria for the issuance of a fine under Rule 1.1, and Pub. Util. Code §§ 2107, 2108, 5411, and 5415.

24. Uber is the parent of Rasier, LLC and Rasier-CA.

25. Rasier, LLC and Rasier-CA are the wholly-owned subsidiaries of Uber.

26. Uber's control over the transportation services provided by Rasier-CA is extensive.

27. The Commission may consider Uber's revenues in setting a fine against Uber's subsidiary.

28. Rasier-CA should be fined \$7,326,000.

29. Rasier-CA's authority to operate as a TNC shall be suspended 30 days after the issuance of this decision.

## ORDER

### IT IS ORDERED that:

1. Rasier-CA, LLC (Rasier-CA) shall pay a \$1,000.00 contempt fine, and a \$7,326,000 fine, by check or money order payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 40 days of the effective date of this order. Rasier-CA shall write on the face of the check or money order "For deposit to the General Fund pursuant to Decision \_\_\_\_\_."

2. All money received by the California Public Utilities Commission's Fiscal Office pursuant to Ordering Paragraph 1 shall be deposited or transferred to the State of California General Fund.

3. Rasier-CA, LLC's (Rasier-CA) license to operate as a Transportation Network Company shall be suspended. Rasier-CA's suspension shall start 30 days after this decision is served and neither Rasier-CA nor SED files an appeal,

and/or a Commissioner does not request review. But if this decision is appealed or a Commissioner requests review, then the suspension shall start 30 days after the modified decision is issued. The suspension shall remain in effect until Rasier-CA complies fully with the outstanding requirements in Reporting Requirements' g, j, and k in Decision 13-09-045 and pays the above-enumerated fines.

4. Rasier-CA, LLC's Motion to Strike Portions of Safety and Enforcement Division's Verified Reply is denied.

5. The Order to show Cause portion of this rulemaking is closed.

6. The remainder of Rulemaking 12-12-011 is open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

# Uber should be suspended in California and fined \$7.3 million, judge says

By LAURA J. NELSON, ANDREA CHANG AND PARESH DAVE

JULY 15, 2015, 5:59 PM

**U**ber — plagued by problems with regulators, drivers and taxi unions around the world — took a big blow in its home state Wednesday when an administrative judge recommended that the ride-sharing giant be fined \$7.3 million and be suspended from operating in California.

In her decision, chief administrative law judge Karen V. Clopton of the California Public Utilities Commission contended that Uber has not complied with state laws designed to ensure that drivers are doling out rides fairly to all passengers, regardless of where they live or who they are. She said Uber's months-long refusal to provide such data is in violation of the 2013 law that legalized ride-hailing firms.

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**FOR THE RECORD:**

**Uber ruling:** An article in the July 16 Business section about a recommendation to fine Uber \$7.3 million and to suspend it in California said the ruling was handed down by Chief Administrative Law Judge Karen V. Clopton of the California Public Utilities Commission. The decision came from Administrative Law Judge Robert Mason.

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Uber said it would appeal. Whether the fine and suspension are enforced will depend on the appeals process, which could take several months.

“They had a year to comply with these regulations, and didn't do it,” CPUC spokeswoman Constance Gordon said.

Uber competes with the taxi industry by contracting with drivers and connecting them with passengers through a smartphone app.

Clopton wrote that her proposed ban would remain in effect until Uber “complies fully with the outstanding requirements.”

The reporting requirements include the number of requests for rides from people with service animals or wheelchairs; how many such rides were completed; and other ride-logging information

such as date, time, Zip Code and fare paid. For Uber, which has raised \$5.9 billion in venture capital investment, a \$7.3-million fine would amount to less than 1% of that. A suspension, however, is another matter.

In a prepared statement, an Uber spokeswoman called the decision “deeply disappointing.”

“We will appeal the decision as Uber has already provided substantial amounts of data to the California Public Utilities Commission, information we have provided elsewhere with no complaints,” spokeswoman Eva Behrend said. “Going further risks compromising the privacy of individual riders as well as driver-partners.”

The decision was applauded by Marilyn Golden, senior policy analyst at the Disability Rights Education & Defense Fund in Berkeley.

“This industry has done everything it can to avoid, dismiss and coerce themselves out of regulation, and this decision is welcome from that standpoint,” she said. “They’ve been scofflaws. They take every advantage and avoid every requirement.”

Juan Matute, associate director of the UCLA Lewis Center and the Institute of Transportation Studies, said though Uber plans to appeal, he expects the company to pay the fine and comply quickly with the ruling.

“The \$7.3-million fine and the data they are asking to provide is not that significant in the grand scheme of things,” Matute said. “Especially in California, I think Uber wants to be seen as a team player because of the recent labor board decision and how that could affect their business. This would seem like a small consolation to improve their chance of success with other regulatory issues that could have a bigger impact on them.”

If the San Francisco company is suspended in its own backyard, it doesn't bode well for the litany of issues it faces worldwide. The company has faced repeated pushback from taxi operators and regulators as it has expanded into more than 300 cities across six continents. In an attempt to win over skeptical local authorities, the company has touted its potential to create jobs, reduce congestion and boost tax revenue.

With California as Uber's home market, Matute said the company is forced to take the fine and judgment seriously.

“It's not a market they would want to jeopardize their existence in over not handing over some spreadsheets,” he said.

Wednesday's decision was the latest run-in that Uber has had with government regulators. The

company has become known for aggressively barreling into new regions without much consideration for existing rules and norms, and has subsequently faced widespread pushback.

Last month, hundreds of French taxi drivers took to the streets in a massive protest against Uber, blocking access to major airports and train stations, and attacking vehicles suspected of working for the popular car service, which they accuse of stealing their livelihoods. This month, Uber suspended its UberPop service in France following those riots.

Uber Chief Executive Travis Kalanick made the case in January that many taxis in Europe operate “off-grid” and that Uber could be a way to bring them into compliance with local safety regulations and tax obligations.

The argument, however, does not appear to have swayed many European governments or taxi companies. More than a dozen lawsuits have been filed in recent months in countries across the continent, where some analysts say the company is in danger of being shut down or becoming so entangled in legislation as to be neutered.

As part of the 2013 law that legalized ride-hailing in California, companies are required to prepare an annual report with data about rides provided through the app.

Uber’s 2014 report did not include hard numbers on customers who requested cars to accommodate service animals or wheelchairs, nor how often those requests were fulfilled, the judge said. The company also didn’t provide raw numbers on requests for rides tabulated by ZIP Code, and how many of those rides were fulfilled, instead providing “aggregates, averages and percentages,” and a heat map showing which ZIP Codes generally saw the most requests.

Uber also failed to submit complete information on drivers who have been suspended or committed a violation, the judge said. The company did not provide the “cause of the incident reported,” or the amount paid out by any insurance company other than Uber’s.

Michael Pachter, managing director of equities research at Wedbush Securities, said Uber should start complying now.

“No amount of bluster is going to get the CPUC off their case,” Pachter said. “You don’t pick a fight with someone who can kick your butt. Uber needs to restrain its hubris.”

**ALSO:**

Snapchat drives trend toward vertical videos

Employee or contractor? Labor Department seeks to clarify rules

## Chinese bid for chip maker Micron Technology could face U.S. scrutiny

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### **UPDATES:**

**4:10 p.m.** This post was updated with more information about the appeals process.

**4:15 p.m.:** This post was updated with background on Uber's regulatory and legal challenges.

**4:25 p.m.** This post was updated with comments from Juan Matute, associate director of the UCLA Lewis Center and the Institute of Transportation Studies.

**5:59 p.m.:** This post was updated with changes throughout.

**From:** Kelly Kay [mailto:kkay@lyft.com]  
**Sent:** Wednesday, July 22, 2015 1:59 PM  
**To:** JIM DAY  
**Cc:** Michael Hillerby; Timothy Burr  
**Subject:** Lyft Comments

Dear Mr. Day,

Thank you for the opportunity to comment on the regulations you so thoughtfully put together. I am attaching a clean and a PDF redlined version of the document for your convenience. I am not sure which one will be easier for you to review.

I also have some sample reports I would like to share that we submit in other jurisdictions. I think you and the commissioners would find them useful in understanding what we are able to share with you. Perhaps we can arrange a meeting to do so. There is confidential information regarding our drivers in the reports and I think face to face is probably best to allow me to explain the means we use to share the data and what we actually share.

I look forward to seeing you tomorrow for another exciting day!

Kind Regards,

Kelly

--

Kelly Kay  
VP - Pay & Compliance  
408 391 1432



LYFT COMMENTS July 22, 2015

## NEVADA TRANSPORTATION AUTHORITY

Docket 15-06024, LCB File No. R029-15

REGULATION AND LICENSING OF TRANSPORTATION NETWORK COMPANIES *Explanation – Matter in italics is new; matter in brackets [omitted material] is material to be omitted* AUTHORITY: Assembly Bill No. 175 and Assembly Bill No. 176 of the 2015 Legislative Session

### General Provisions

Sec. 0. Prior emergency regulations. (AB176, Sec. 46) All obligations and standards imposed in Section 1 – 149, inclusive, supersede the terms of the emergency regulations adopted by the Nevada Transportation Authority on June 29, 2015.

Sec. 1. Definitions. (AB176, Sec. 46) As used in Sections 1 - 149, inclusive, unless the context otherwise requires, the words and terms defined in Sections 2 - 25, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. “Application” defined. (AB176, Sec. 46) “Application” means a request for transportation network company operating authority or for relief filed with the Authority as specified in Sections 34 and 91.

Sec. 3. “Authority” defined. (AB176, Sec. 46) “Authority” means the Nevada Transportation Authority.

Sec. 4. “Permit” defined. (AB176, Sec. 46) “Permit” means a permit to operate as a transportation network company issued by the Authority.

Sec. 5. “Permit holder” defined. (AB176, Sec. 46) “Permit holder” means a person who holds a permit to operate as a transportation network company issued by the Authority.

Sec. 6. “Chair” defined. (AB176, Sec. 46) “Chair” means the person designated as the Chair of the Authority.

Sec. 7. “Commissioner” defined. (AB176, Sec. 46) “Commissioner” means a member of the Authority appointed.

Sec. 8. “Complaint” defined. (AB176, Sec. 46) “Complaint” means a written request for relief filed with the Authority.

Sec. 9. “Deputy Commissioner” defined. (AB176, Sec. 46) “Deputy Commissioner” means the Deputy appointed by the Authority.

Sec. 10. “Driver” defined. (AB176, Sec. 18) “Driver” means a natural person who:  
1. Operates a motor vehicle that is owned, leased or otherwise authorized for use by the

person; and

2. Enters into an agreement with a transportation network company to receive connections to potential passengers and related services from a transportation network company in exchange for the payment of a fee to the transportation network company.

Sec. 11. "Hearing" defined. (AB176, Sec. 46) "Hearing" means any public proceeding for which notice is provided by the Authority in accordance with applicable statutes and regulations.

Sec. 12. "Longer route to the passenger's destination" defined. "Longer route to the passenger's destination" as used in AB176, Sec. 38(2)(c) means any route taken that was not consented to by the passenger and which a driver knows or reasonably believes will not result in the lowest fare to the passenger.

Sec. 13. "Motion" defined. (AB176, Sec. 46) "Motion" means a request for relief filed with the Authority pursuant to Section 94.

Sec. 14. "Available to receive trip requests" defined. (AB176, Sec. 46) "Available to receive trip requests" means any period in which a driver is logged into the digital network or software application service used by the transportation network company and is available to receive requests for transportation services or providing transportation services.

Sec. 15. "Operating authority" defined. (AB176, Sec. 46) "Operating authority" means a permit issued by the Authority pursuant to which a person may operate as a transportation network company subject to the jurisdiction of the Authority.

Sec. 16. "Party of record" defined. (AB176, Sec. 46) "Party of record" means an, complainant, or respondent.

Sec. 17. "Permit" defined. (AB176, Sec. 46) "Permit" means a permit issued by the Authority to operate as a transportation network company.

Sec. 18. "Petition" defined. (AB176, Sec. 46) "Petition" means a request for relief made to the Authority pursuant to Section 92.

Sec. 19. "Pleading" defined. (AB176, Sec. 46) "Pleading" means any application, petition, complaint, answer, protest or motion filed with the Authority in any proceeding.

Sec. 20. "Presiding officer" defined. (AB176, Sec. 46) "Presiding officer" means the Chair of the Authority or a commissioner designated by the Chair to preside over a hearing.

Sec. 21. “Rebuttal” defined. (AB176, Sec. 46) “Rebuttal” means evidence offered by an or complainant which must directly explain, repel, counteract or disprove facts offered in evidence by parties of record opposing the, petition or complaint.

Sec. 22. “Regular business hours” defined. (AB176, Sec. 46) “Regular business hours” means Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays.

Sec. 23. “Staff of the Authority” defined. (AB176, Sec. 46) “Staff of the Authority” means persons employed by the Authority.

Sec. 24. “Transportation network company” or “company” defined. (AB176, Sec. 19) “Transportation network company” or “company” means an entity that uses a digital network or software application service to connect a passenger to a driver who can provide transportation services to the passenger.

Sec. 25.

Sec. 26. Severability. (AB176, Sec. 46) If any provision of Sections 1 – 149, inclusive, or any application thereof to any person, thing or circumstance is held invalid, the Authority intends that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

Sec. 27. Deviation from regulations. (AB176, Sec. 46) The Authority will and the presiding officer shall allow deviation from the provisions of Sections 1 – 149, inclusive, if good cause for deviation appears. Any deviation must comply with AB 175 and 176, must be publicly noticed, and a public comment period provided, before being adopted.

Sec. 28. Computation and extension of time. (AB176, Sec. 46) Except as otherwise provided by law:

1. In computing any period prescribed or allowed by any regulation of the Authority, the day of the act, event or default from or after which the designated period begins to run is not included. The last day of the period so computed is included, but if it is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

2. Whenever an act is required or allowed pursuant to any regulation of the Authority, or any notice given thereunder, to be done within a specified period, the Authority may extend the specified period for good cause upon a motion made before the specified period expires.

Sec. 29. Payment of fees, remittances and administrative fines. (AB176, Sec. 46)

1. A fee or remittance by money order, bank draft or check to the Authority, or by an

electronic transfer of money for fees or remittances which are equal to, or greater than, the amount specified in NRS 353.1467, must be made payable to the “Nevada

Transportation Authority.” A remittance in currency or coin is acceptable but is sent wholly at the risk of the remitter, and the Authority assumes no responsibility for the loss of such a remittance. An application fee or other charge required by law must be paid to the Authority at the time of filing with the Authority.

2. An administrative fine imposed pursuant to AB176, Sec. 42 must be paid by cash, cashier’s check, or money order or, if the administrative fine is equal to, or greater than, the amount specified in NRS 353.1467, by the electronic transfer of money.

Sec. 30. Public records; filing and confidentiality of certain information. (AB176, Sec. 46) 1. Except as otherwise provided by law, all documents filed with the Authority become matters of public record as of the day and time of their filing. The Deputy Commissioner, within reasonable limits of time and general expediency, shall allow members of the public to examine these public records.

2. An applicant shall not include any of the following items in an application filed with the Authority:

- (a) Copies of tax returns;
  - (b) Copies of bank statements, brokerage statements and retirement statements;
  - (c) Loan documents;
  - (d) Credit reports;
  - (e) Reports concerning criminal background;
  - (f) Records from the Department; and
  - (g) Any other document determined to be confidential pursuant to Sections 80 - 89, inclusive.
3. Upon request, copies of public records will be made and a reasonable fee will be charged

for the cost of reproduction. Copies of transcripts must first be requested from the court reporter or transcriber who made the transcript.

Sec. 31. Rejection of documents. (AB176, Sec. 46) A document which is not in compliance with the provisions of Sections 1 – 149, inclusive, or applicable statutes may be rejected. If rejected, that document will be returned with an indication of the deficiencies. The acceptance of a document for filing is not a determination that the document complies with all applicable statutes and regulations of the Authority and is not a waiver of those applicable statutes and regulations.

Sec. 32. Receipt of written communications and documents. (AB176, Sec. 46) A written communication or document is considered officially received by the Authority only if it is:

- 1. Filed at the office of the Authority in Las Vegas and addressed to the Deputy Commissioner; or
- 2. Presented to the Authority during a hearing.

Sec. 33.

Applications Relating to Permits for Transportation Network Companies

Sec. 34. Application for a transportation network company permit. (AB176, Sec. 26, AB176, Sec. 46)

1. An application for:

(a) The initial issuance of a permit to act as a transportation network company pursuant to the provisions of AB 175 and AB 176;

(b) The sale and transfer of an interest in: (1) A permit;

(2) Fifteen percent or more of the stock of a corporation that holds a permit;

(3) A partnership that holds a permit; or

(4) A corporate entity that holds a permit which would result in a change in the corporate

control of the carrier,

↪ in addition to complying with the general pleading standards for applications set forth in Section 91, must contain the following data, either in the application or as exhibits attached thereto:

(c) A statement and general description of the type of service to be performed by the applicant, including the rates or fares to be charged and rules governing service.

(d) A statement of the qualifications and experience of the personnel who will manage and operate the proposed service.

(e) A statement describing the technology which will be used to provide the proposed service.

(f) If the applicant is a corporation or limited-liability company, a copy of its articles of incorporation or articles of organization. If the corporation or limited-liability company was incorporated or established in another state, the application must include:

(1) A copy of the certificate issued by the Office of the Secretary of State authorizing the corporation or limited-liability company to transact its business in the State of Nevada; or

(2) Its equivalent, as provided in NRS 80.120.

(g) If the applicant is a partnership, a copy of the partnership agreement and any

amendments made thereto.

(h) A copy of the state business license issued pursuant to chapter 76 of NRS in the

applicant's name.

(i) A copy of the insurance policy meeting all the requirements set forth in AB 175 and AB

176 identifying the Nevada Transportation Authority as a named insured.

(j) An application fee. the application fee shall be in the amount of \$50,000.00. Smaller operations wishing to self-impose a limitation on the size of their operation may choose to pay a reduced fixed portion of the application fee based on the following schedule:

(1) for applicants seeking authority to utilize no more than 100 vehicles cumulatively within the first 12 months after a permit is granted, \$1,000.00;

(2) for applicants seeking authority to utilize no more than 500 vehicles cumulatively within the first 12 months after a permit is granted, \$5,000.00;and

(3) for applicants seeking authority to utilize no more than 1,000 vehicles cumulatively within the first 12 months after a permit is granted, \$10,000.00

(4) for applicants seeking authority to utilize no more than 2,500 vehicles cumulatively within the first 12 months after a permit is granted, \$25,000.00.

(k) Additional information as is necessary for a full understanding of the application.

2. Pending applications filed prior to the effective date of this section shall receive a credit towards the application fee due under subsection (1)(j) in the amount of any prior application fee paid, with the remaining balance due within 15 days of the effective date of this section.

3. If any item required pursuant to this section or by statute is omitted or otherwise deficient after acceptance of the application or filing, the Authority will notify the applicant of the omission or deficiency, in writing, at the address of the applicant listed on the application or filing. If the applicant does not cure the omission or deficiency within 15 working days after the issuance of that notification, the Deputy Commissioner may, at the next regular meeting of the Authority, move that the application or filing be dismissed.

4. The Authority will make a determination as to the completeness of the application and determine whether the applicant meets the requirements for the issuance of a permit within thirty (30) days of submission of the application filing.

#### Permits for Transportation Network Companies

Sec. 35. Issuance of Permit. (AB176, Sec. 27, AB176, Sec. 46)

Upon receipt of a completed application and upon a determination by the Authority that an applicant meets the requirements for the issuance of a permit to operate a

transportation network company, the Authority shall issue to the applicant within 30 days a permit to operate a transportation network company.

Sec. 35.5. Self-imposed restriction on permit. (AB176, Sec. 27, AB176, Sec. 46)

If an applicant chooses to self-impose a limitation on the size of their operation during the first 12 months after a permit is granted in order to pay a reduced application fee pursuant to Section 34, the permit issued by the Authority pursuant to Section 35 shall state a restriction to the appropriate total number of vehicles authorized during the first 12 months after the permit is granted.

Sec. 36. Revocation or suspension of permit: Failure to operate under terms and conditions of permit or to comply with provisions of chapter or regulations of Authority. (AB176, Sec. 46) The Authority:

1. Shall revoke or suspend, pursuant to the provisions of this chapter, the permit of a transportation network company which has failed to operate as a transportation network company in this State under the terms and conditions of its permit,  
↳ unless the carrier has obtained the prior permission of the Authority.

2. May revoke or suspend the permit of a transportation network company which has failed to comply with any provision of this chapter or any regulation of the Authority adopted pursuant thereto.

Sec. 37. Suspension or revocation of permit or license; notice and hearing; conditions; judicial review. (AB176, Sec. 46)

1. A permit issued in accordance with this chapter is not a franchise and may be revoked.
2. The Authority may at any time, for good cause shown, after investigation and hearing

and upon 30 days' written notice to the grantee, suspend any permit issued in accordance with the provisions of AB175 and AB 176 inclusive, for a period not to exceed 60 days.

3. Upon receipt of a written complaint or on its own motion, the Authority may, after investigation and hearing, revoke any permit. If service of the notice required by subsection 2 cannot be made or if the grantee relinquishes the grantee's interest in the permit by so notifying the Authority in writing, the Authority may revoke the permit without a hearing.

4. The proceedings thereafter are governed by the provisions of chapter 233B of NRS.

#### Reporting Requirements for Transportation Network Companies

Sec. 38. Driver Data and vehicle inspections. (AB176, Sec. 27, AB176, Sec. 46)

1. On a monthly basis, Transportation Network Companies shall provide to the Authority

a report in a manner agreed upon between the Transportation Network Company and the Authority setting forth the names and drivers license numbers of each Driver who has satisfied all of the requirements of AB 176, Section 29 and those requirements of the Transportation Network Company' s

2. With regards to each driver reported to the Authority, the Transportation Network Company shall affirm via affidavit that the drivers have met all of the requirements contained within AB 176, section 29.

3. Thereafter on an annual basis, or more frequently upon written request of the Authority, the Transportation Network Company will provide a report of all drivers active in the Transportation Network Company' s system.

4. Before permitting a vehicle to be placed into service through a transportation network company, the transportation network company shall provide an affidavit to the Authority confirming the vehicle has met all of the requirements contained within AB 176, section 31.

5. Upon reasonable notice from the Authority, the Transportation Network Company will provide information necessary to demonstrate compliance with AB 176, section 29.

5. A transportation network company must retain all documents necessary to demonstrate compliance with paragraph 2 of this section for a period of three years.

#### Regulatory Assessment

Sec. 38.5. Regulatory Assessment (AB176, Sec. 27, AB176, Sec. 46, AB176, Sec. 50)

1. Upon the expiration of one year from the date of issuance of a permit to a transportation network company pursuant to Section 35, the permitted transportation network company shall within 10 days submit to the Authority a statement of the gross operating revenue derived from the Nevada intrastate operations of the transportation network company for that year of operation. Upon receipt of that statement, the Authority shall within 10 days issue to the transportation network company a notice of annual regulatory assessment.

2. The regulatory assessment referenced in subsection 1 shall be not exceed 1% of the gross operating revenue reported in the statement from the transportation network company and shall be based upon the Authority' s actual expenses for the maintenance of the compliance program associated with oversight over the Transportation Network Companies. The Authority shall annually reevaluate the regulatory assessment rate based upon the total revenues generated from the fixed and scalable application fees set forth in Sections 34 and 38 and the Authority' s expenses for the oversight of transportation network companies.

## Regulation of Transportation Network Companies Generally

Sec. 39. Required compliance and instruction. (AB176, Sec. 46) Every transportation network company shall comply with Sections 40 - 68, inclusive, and shall instruct his or her employees and agents concerned with the transportation of persons with respect thereto.

Sec. 40. No property right in grant of authority. (AB176, Sec. 46) No grant of authority for transportation network company operations carries with it the implication or intent of investing the holder with any property right.

Sec. 41. Commencement of operations. (AB176, Sec. 46)

1. Unless otherwise authorized by the Authority, each applicant for a permit, or the transfer of a permit, whose application has been granted must commence operations within 30 days after the date on which the permit was issued, or forfeits the rights granted.

2. No applicant may start operating until he or she has complied with all requirements of AB 175 and 176.

Sec. 42. Use of trade or fictitious name. (AB176, Sec. 46) No TNC may use any trade name or any fictitious name unless they have the legal rights to utilize such name and the name has been submitted to the Authority in advance.

Sec. 43. Identification on vehicles. (AB176, Sec. 46)

1. The Transportation Network Company shall submit to the Authority a sample of their trade dress which shall serve as the means to identify a driver and vehicle approved by the TNC and submitted to the Authority pursuant to section 38.

2. While a driver is active in the TNC application and accepting or providing rides, Drivers shall be required to display the TNC trade dress. Drivers shall be prohibited from displaying a TNC trade dress when they are not actively accepting rides through the application or providing a ride to a passenger.

3. The trade dress shall be unique and identifiable from a distance of at least 50 feet and measure at least 4 inches by 4 inches.

4. When required under section 43, the trade dress shall be affixed to the front right hand corner of the windshield of the driver's vehicle.

5. TNCs may modify the trade dress by submitting the same to the Authority thirty (30) days in advance of any modification.

Sec. 44. Insurance. (AB176, Sec. 11, AB176, Sec. 46)

All transportation network companies shall maintain a contract of insurance against

liability for injury to persons and damage to property in the minimum amounts prescribed in AB176, Sec. 11 and AB175, Sec. 3 through 13.

Sec. 45. Evidence of insurance; change in information. (AB176, Sec. 11, AB176, Sec. 46)

1. Before a permit will be issued, the applicant shall file with the Authority evidence of the necessary insurance required by AB176, Sec. 11.
2. After the Authority issues a permit to a transportation network company, the holder of the permit shall submit any change in the information required pursuant to subsection 1 to the Authority within 30 days after the change occurs.

Sec. 46. Cooperation with inspections. (AB176, Sec. 46)

1. [Covered below]

2. Upon reasonable notice, the Authority or its appointed representative may request to view the records or documents of a TNC. In the event the records are located outside of Nevada, the TNC shall reimburse the Authority for any reasonable costs necessary to inspect the records. Alternatively, the TNC may provide the records in person to the Authority for inspection.

Sec. 47. Maintenance of records. (AB176, Sec. 46)

1. An authorized transportation network company shall maintain the records required by the Authority in a form accessible in Nevada and allow for their inspection as required by AB 175 and 176.

2. All records required by the Authority to be maintained by an authorized transportation network company must be maintained by the authorized transportation network company for at least 3 years.

3. All records required by the Authority to be maintained by an authorized transportation network company are subject to inspection or audit by the Authority or its designated agent at any time during regular business hours upon reasonable notice.

Sec. 48. Notification of corporate changes; (AB176, Sec. 46)

1. All transportation network companies operating within this State under the jurisdiction of the Authority shall within thirty (30) days notify the Authority of any changes in address, officers of the corporation, or discontinuance of operations under the authority granted them in their permit.

2. Any transportation network company, within thirty (30) days of a sale of all or substantially all of its assets which results in a change in corporate control shall notify the authority of such change in writing. The TNC shall provide the information requested in section 34 for consideration by the Authority and the Authority shall have thirty (30) days to issue a Permit. The re-issuance of the Permit may not be unreasonably denied. An initial public offering of a TNC shall not be deemed a change in control under this

section. A change in control and the re-issuance of a permit shall not result in an additional application fee pursuant to section 34 (j) unless the TNC had previously limited its size of operations and the change in control will result in the TNC becoming subject to a higher tier cumulative vehicle cap.

Sec. 49. Solicitation of passengers. (AB176, Sec. 46, AB176, Sec. 38)

1. While accepting rides through the application, a transportation network company driver shall not stand a vehicle or park

a vehicle within 50 feet of a designated taxicab stand unless the Chairman or his or her designee has authorized the permit holder to stop or park the vehicle within 50 feet of the designated taxicab stand, or unless the driver is loading, unloading, or awaiting a passenger for whom the driver has accepted a connection arranged through a transportation network company's digital network or software application service.

Sec. 50. Designation of registered agent. (AB176, Sec. 46, AB176, Sec. 28) All transportation network companies shall notify the Authority of the name and contact information of its current registered agent residing within this State.

Sec. 51. Leaving vehicle unattended in passenger curbside loading zone: Prohibition; exception. (AB176, Sec. 46, AB176, Sec. 38)

1. While available to accept trip requests, a driver shall comply with the restrictions on passenger curbside loading zones in NRS 484B.503.

Sec. 52. Zero Tolerance (AB 176, section 39)

1. A driver is prohibited from consuming, using or being under the influence of any intoxicating liquor or controlled substance during any period in which the driver is providing transportation services on behalf of the transportation network company and any period in which the driver is logged into the digital network or software application service of the transportation network company and available to receive requests for transportation services but is not providing transportation services.

2. Each transportation network company shall: (a) Provide notice of the provisions of subsection 1:

(1) On an internet website maintained by the company; or

(2) Within the digital network or software application service of the company; and

(b) Provide for the submission to the company of a complaint by a passenger who reasonably believes that a driver is operating a motor vehicle in violation of the provisions of subsection 1.

3. Upon receipt of a complaint submitted by a passenger who reasonably believes that a driver is operating a motor vehicle in violation of the provisions of subsection 1, a transportation network company shall immediately suspend the access of the driver to the digital network or software application service of the company and conduct an investigation of the complaint. The company shall not allow the driver to access the digital network or software application service of the company or provide transportation services in affiliation with the company until after the investigation is concluded.

4. If a transportation network company determines, pursuant to an investigation conducted pursuant to subsection 3, that a driver has violated the provisions of subsection 1, the company shall terminate the agreement entered into with the driver and shall not allow the driver to access the digital network or software application service of the company.

5. Each transportation network company shall maintain a record of each complaint described in subsection 3 and received by the company for a period of not less than 3 years after the date on which the complaint is received. The record must include, without limitation, the name of the driver, the date on which the complaint was received, a summary of the investigation conducted by the company and the results of the investigation.

#### Sec. 53. Accessibility & Discrimination (AB 176, Sec 32)

1. A transportation network company shall adopt a policy which prohibits discrimination against a passenger or potential passenger on account of national origin, religion, age, disability, sex, race, color, sexual orientation or gender identity or expression.

2. A driver shall not discriminate against a passenger or potential passenger on account of national origin, religion, age, disability, sex, race, color, sexual orientation or gender identity or expression.

3. A transportation network company shall provide to each passenger an opportunity to indicate whether the passenger requires transportation in a motor vehicle that is wheelchair accessible. If the company cannot provide the passenger with transportation services in a motor vehicle that is wheelchair accessible, the company must direct the passenger to an alternative provider or means of transportation that is wheelchair accessible, if available.

#### Sec. 54. List of supervisory employees of transportation network company. (AB176, Sec. 46)

A permitted transportation network company shall maintain a current list of supervisory or responsible persons authorized to act on behalf of the TNC with the Authority. The carrier shall provide a copy of the list of supervisory or responsible persons to the Authority and shall update that copy as necessary.

Sec. 55. Notice of certain information and contact information. (AB176, Sec. 46, AB176, Sec. 39)

1. A transportation network company shall include on the passenger receipt: the total fare charged and any additional fees, a link to its Zero Tolerance policy, its fare dispute process, and its privacy policy.

2. A transportation network company shall include on its website the following information:

If you have any questions concerning the services provided or wish to file a commendation or complaint, you may contact the Nevada Transportation Authority at (702) 486-3303 or through its website at <http://www.nta.nv.gov>.]

Rates and Services Sec. 56. Rates & Emergency Rates (AB176, Sec. 30, AB176, Sec. 46)

1. At the time of permit application, the transportation network company shall notify the Authority of its rates currently in use, and file with the Authority any material increase in its rates within thirty (30) days of the rates effective date.

2. During an emergency, as defined in NRS 414.0345, a transportation network company shall not charge a rate in excess of twice the base rate on file with the authority upon the date of the emergency. If a transportation network company chooses to charge a rate up to twice the base rate it must disclose to the customer the rate charged by the company and the method by which the amount of the fare is calculated.

Sec. 57. Uniform rates; authorization of commission or referral fee; list of designated agents. (AB176, Sec. 46)

1. A transportation network company or driver shall not:

(a) Charge, demand, collect or receive a greater, lesser or different compensation for the transportation of persons or property or for any service in connection therewith than the rates applicable to the transportation as specified by the transportation network company application, plus any tips added by passengers either through the application or cash based tips.

2. A transportation network company may dynamically price its service above the base rate on file, other than during an emergency subject to section 56(2), provide such dynamic pricing is clearly disclosed to the passenger through the application prior to commencing the ride.

3. A transportation network company may pay a commission or referral fee to a designated agent who arranges for the provision of transportation services by a driver through the application.

Sec. 58.

Sec. 59. Interruption of service. (AB176, Sec. 46)

1. A transportation network company shall provide written notice of any interruption of service in excess of 48 hours to the Authority within 24 hours of such outage.

Sec. 60. Use of vehicles beyond scope of authority prohibited. (AB176, Sec. 46) The vehicles of an authorized carrier must not be used for transportation services beyond the scope of the authority of that carrier, even if the services are resold by a broker.

Sec. 61. Compensation for services of driver. (AB176, Sec. 46) A driver shall not accept any form of compensation for that service from any person except the transportation network company.

#### Drivers

Sec. 62. Prohibited acts. (AB176, Sec. 46, AB176, Sec. 38) A driver:

1. Shall not divert or attempt to divert a prospective customer from any commercial establishment.
2. Except as authorized by the transportation network company or the Authority, drivers shall not allow any other person within his or her vehicle unless that person is a passenger who is being transported for a fare, or the guest of such a passenger.

Sec. 63. Driver hours of service. (AB176, Sec. 46)

1. A driver shall not, and a transportation network company shall not permit a driver to remain logged into the application and accepting rides for longer than 14 consecutive hours unless the driver is involved in a trip that commenced within a reasonable period before the end of a period of 14 consecutive hours.

2. A driver who has been logged in to the application and accepting rides for 14 hours or more:

- (a) Shall not resume driving; and
- (b) Must be logged off of the application for at least 6 consecutive hours.

3. Except as otherwise provided in subsection 1, a transportation network company shall not knowingly require or allow any driver to be logged into the application and accepting rides longer than 14 consecutive hours.

4. A transportation network company shall provide an appropriate and accurate method for tracking the hours that its drivers are logged into the application and accepting rides.

Sec. 64. Drivers: Standards of conduct. (AB176, Sec. 46, AB176, Sec. 31, AB176, Sec. 39) While available to receive trip requests, a driver:

1. Shall not engage in verbal arguments or acts of physical violence.
2. Shall limit the number of passengers in his or her vehicle in excess of the number of seatbelts in the vehicle.
3. Shall not operate a vehicle if the driver is suffering from any illness or physical or mental disorder that may impair his or her ability to operate a vehicle safely.
4. Shall not operate a vehicle while taking drugs that may impair his or her ability to operate a vehicle safely.

Sec. 65. Drivers: Use of vehicle for crime. (AB176, Sec. 46) A driver shall not willfully, knowingly or intentionally use the driver's vehicle to facilitate the commission of a crime, or allow the use of his or her vehicle by another person as a means of facilitating the commission of a crime.

#### Inspection and Maintenance

Sec. 66.

Inspection of vehicles by Authority; removal of vehicles from service; maintenance of records. (AB176, Sec. 46)

1. A vehicle operated pursuant to a transportation network company permit may be inspected at any time while displaying its trade dress by an authorized employee of the Authority.
2. If the authorized employee of the Authority finds that a vehicle is in a condition which poses an immediate and substantial threat to the safety of the public or passengers of the vehicle, he or she shall immediately remove the vehicle from service by notifying the driver and the transportation network company.
3. A vehicle removed from service pursuant to subsection 2 must remain out of service until the defect is repaired.

#### Practice Before Nevada Transportation Authority

Sec. 69. Scope; applicability of Nevada Rules of Civil Procedure. (NRS 233B.050, AB176, Sec. 46)

1. Sections 69 - 149, inclusive, govern practice before the Authority.
2. To the extent that any action before the Authority is not covered by the provisions of Sections 69 - 149, inclusive, the Authority may, to the extent it deems appropriate, use the applicable rule of the Nevada Rules of Civil Procedure.

Sec. 70. Construction. (NRS 233B.050, AB176, Sec. 46) The provisions of Sections 69 - 149, inclusive, and any regulations incorporated by reference will be construed by the Authority or presiding officer so as to secure a just and speedy determination of the issues.

Sec. 71. Nature of proceedings. (NRS 233B.050, AB176, Sec. 46) Proceedings before the Authority are investigative on the part of the Authority, although the proceedings may be conducted in the form of adversary proceedings.

Sec. 72. Parties: Classification of parties. (NRS 233B.050, AB176, Sec. 46)

1. According to the nature of the proceedings before the Authority and the relationships of

the parties to the proceedings, a party to a proceeding must be styled an applicant, petitioner, complainant, respondent or protestant.

2. A person applying in the first instance for a privilege, right or authorization from the Authority must be styled an "applicant."

3. A person who complains to the Authority of an act by a person subject to the jurisdiction of the Authority must be styled a "complainant."

6. A person against whom a complaint is filed or a person who is the subject of an official investigation by the Authority must be styled a "respondent."

Sec. 73. Parties: Notice to parties. (NRS 233B.050, AB176, Sec. 46)

1. The Authority will provide notice of the pendency of any matter before the Authority to

the parties to the matter.

2. The notice of pendency will specify that the party may, within 10 days after the date of the

notice, request a hearing on the matter.

3. If no request for a hearing is received by the Authority, it will dispense with a hearing and act upon the matter unless it finds that a hearing is necessary.

Sec. 74. Parties: Rights of staff of Authority. (NRS 233B.050, AB176, Sec. 46) The staff of the Authority may appear, be represented by the Attorney General and may otherwise participate in all proceedings before the Authority.

Sec. 75. Parties: Rights of parties. (NRS 233B.050, AB176, Sec. 46)

1. At any proceeding before the Authority, each party of record is entitled to enter an

appearance, introduce evidence, examine and cross-examine witnesses, make arguments, make and argue motions and generally participate in the proceeding to the extent allowed by the presiding officer.

2. The presiding officer shall acknowledge a protestant for the purpose of making a statement.

Sec. 76. Parties: Appearances. (NRS 233B.050, AB176, Sec. 46) A party may enter an appearance at the beginning of a hearing or at some other time designated by the presiding officer by giving his or her name and address. If a person is appearing on behalf of a party, the person must also identify the party he or she represents.

Sec. 77. Parties: Representation of parties; qualifications of attorneys. (NRS 233B.050, AB176, Sec. 46)

1. A party may represent himself or herself or may be represented by an attorney. Any other person who satisfies the Authority or presiding officer that he or she possesses the expertise to render valuable service to the Authority, and that he or she is otherwise competent to advise and assist in the presentation of matters before the Authority, may be allowed to appear on behalf of a party or parties.

2. An attorney at law appearing as legal counsel in any proceeding must be duly admitted to practice and in good standing before the highest court of any state. If an attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he or she must associate with an attorney so admitted and entitled to practice.

Sec. 78. Parties: Withdrawal of representative. (NRS 233B.050, AB176, Sec. 46) A representative wishing to withdraw from a proceeding before the Authority must provide written notice of his or her intent to withdraw to the Authority and each party to the proceeding.

Sec. 79. Parties: Conduct required. (NRS 233B.050, AB176, Sec. 46)

1. Any person appearing in a proceeding must conform to recognized standards of ethical

and courteous conduct required of practitioners before the courts of this State.

2. Contumacious conduct by any person at any hearing before the Authority is a ground for

the exclusion of that person from that hearing and for summary suspension of that person from further participation in the proceedings. The Authority will bar any person excluded pursuant to this subsection from attending any further proceedings of the Authority unless the Authority grants a petition by that person pursuant to subsection 3.

3. Any person excluded from proceedings of the Authority pursuant to subsection 2 may petition the Authority to rescind the exclusion. The Authority will grant the petition if it

finds sufficient evidence that the contumacious conduct which led to the exclusion of the person will not reoccur.

Sec. 80. Confidentiality of information: Definitions. (NRS 233B.050, AB176, Sec. 46)  
As used in Sections 80 - 89, inclusive, unless the context otherwise requires, the words and terms defined in Sections 81 - 83 have the meanings ascribed to them in those sections.

Sec. 81. Confidentiality of information: "Information" defined. (NRS 233B.050, AB176, Sec. 46) "Information" means any books, accounts, records, minutes, reports, papers and property of a person which are in the possession of, or have been provided to, the Authority.

Sec. 82. Confidentiality of information: "Person" defined. (NRS 233B.050, AB176, Sec. 46) "Person" means a natural person, any form of business or social organization and any other legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, government, governmental agency or political subdivision of a government.

Sec. 83. Confidentiality of information: "Protective agreement" defined. (NRS 233B.050, AB176, Sec. 46) "Protective agreement" means an agreement pursuant to which a person agrees not to disclose, or otherwise make public, the information requested to be confidential and which specifies the manner in which the confidentiality of the information is to be treated.

Sec. 84. Confidentiality of information: Applicability. (NRS 233B.050, AB176, Sec. 46)  
The provisions set forth in Sections 80 - 89, inclusive, apply to all proceedings before the Authority or presiding officer.

Sec. 85. Confidentiality of information: Request for confidential treatment of information; procedure; responsibilities of Authority; hearing. (NRS 233B.050, AB176, Sec. 46)

1. A person who requests that information, which is in the possession of the Authority and pertains to that person, not be disclosed must submit to:

(a) The Deputy Commissioner, one copy of the document which contains the information in an unredacted form. The document must be placed in a sealed envelope, and the envelope and each page of the document must be stamped with the word "Confidential."

(b) The Authority, a copy of the document which redacts the information for which the confidential treatment is requested and such additional copies of the redacted document as requested by the Authority. The Authority may not request more than nine additional copies of the redacted document.

2. A request that information not be disclosed must be served on the staff of the Authority and must:

- (a) Describe with particularity the information to be treated as confidential information;
- (b) Specify the grounds for the claim of confidential treatment of the information; and
- (c) Specify the period during which the information must not be disclosed.

3. Public disclosure of only those specific portions of a filing which contain information for

which confidentiality is requested will be withheld or otherwise limited.

4. If the information for which confidentiality is requested is part of an application, petition

or other initial filing, the application, petition or filing must comply with the provisions of this section. The initial notice issued by the Authority pursuant to Section 73 will state that certain information contained in the application, petition or filing has been requested to be treated as confidential information.

5. The Authority is responsible for the custody, maintenance and return or disposal of confidential information in the possession of the Authority and will:

(a) Maintain the confidential information separate and apart from all other records of the Authority; and

(b) Adequately safeguard access to such information and ensure that confidential information is not divulged to unauthorized persons.

6. To determine whether to accord confidential treatment to information pursuant to Sections 80 - 89, inclusive, the presiding officer may review the information in camera.

7. Notwithstanding the other provisions of this section, the staff of the Authority is entitled to receive information designated as confidential in accordance with Sections 80 - 89, inclusive, if the staff of the Authority has executed a protective agreement.

Sec. 86. Confidentiality of information: Prepared testimony containing or addressing information designated as confidential. (NRS 233B.050, AB176, Sec. 46) For information that has been determined to be confidential, the Authority will or the presiding officer shall, in addition to the other procedures set forth in Sections 80 - 89, inclusive:

1. Require that the prepared testimony which contains the confidential information not be disclosed except as otherwise specified in a protective agreement or a protective order issued by the Authority or presiding officer; or

2. Unless otherwise agreed upon by the parties involved, require that the portion of the prepared testimony of a person which may address the confidential information be submitted to the party who had requested that the information not be disclosed, before the date on which the prepared testimony is to be submitted to the Authority or other parties.

Sec. 87. Confidentiality of information: Contents of protective order issued with regard to information designated as confidential. (NRS 233B.050, AB176, Sec. 46) If the Authority or presiding officer determines that a protective order should be issued with regard to the information designated as confidential, the Authority will or the presiding officer shall, issue a protective order which:

1. Describes generally the nature of the confidential information and the procedures to be used to protect the confidentiality of the information.
2. Specifies the period during which the disclosure of the information to the public will be withheld or otherwise limited.
3. Specifies the procedures to be used by each person during the pendency of the proceedings to ensure the confidentiality of the information.
4. Specifies the procedures for handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential.
5. Requires that the confidential information not be disclosed, except as:
  - (a) May be agreed upon by the parties pursuant to a protective agreement; or
  - (b) Otherwise directed by the Authority or presiding officer.
6. Specifies the procedures to be used at the time of the evidentiary hearing to protect the confidentiality of the information.
7. Requires such other action as the Authority or presiding officer deems appropriate under the circumstances.

Sec. 88. Confidentiality of information: Appeal of determination by presiding officer regarding treatment of confidential information; disclosure of information not designated confidential. (NRS 233B.050, AB176, Sec. 46)

1. Any determination by the presiding officer regarding the treatment of confidential information may be appealed to the full Authority pursuant to Section 125. The information will be subject to public disclosure 3 business days after the date on which the presiding officer issues his or her order denying the request for confidentiality unless:

- (a) The party who made the request appeals the decision of the presiding officer to the full Authority; or
- (b).

*1. If appealed to the full Authority, the information at issue will be subject to public disclosure 10 business days after the date on which the Authority issues its*

*order denying the request for confidentiality unless the party who filed the appeal requests an appeal of the Authority's order to the Nevada state courts.*

2. If the Authority determines that the disclosure of information requested to be treated as confidential information is justified, the Authority will:

(a) Issue an order to that effect; and

(b) Unless otherwise required by the order of a court of competent jurisdiction or agreed upon by the parties involved, continue to protect the information from public disclosure for the next 3 business days after the date on which the order denying the confidential treatment of the information is issued.

Sec. 89. Confidentiality of information: Disclosure of information designated as confidential; penalties. (NRS 233B.050, AB176, Sec. 46)

1. During the pendency of a proceeding, any person who receives information which has been designated as confidential pursuant to Sections 80 - 89, inclusive:

(b) May request, at any time, that the Authority or presiding officer make a determination that the disclosure of the information is justified. The person may accompany his or her request with a sealed copy of the unredacted document or information.

2. The person seeking to have the information protected from disclosure has the burden of proof to demonstrate that the information sought to be disclosed is entitled to that protection.

3. Information which is the subject of an agreement or a protective order will be provided only to the staff of the Authority.

4. A person, a party, the legal counsel of a party or the expert designated by a party who:

(a) Violates the procedures of the Authority or presiding officer for protecting information; (b) Fails to obey a protective order issued by the Authority or presiding officer;

(c) Violates the terms or conditions of a protective agreement; or

(d) Violates any other prohibition of the disclosure of information designated as confidential pursuant to Sections 80 - 89, inclusive,

➔ is subject to the penalties and civil remedies prescribed in AB176, Sec. 42.

Sec. 90. Pleadings: Captions, amendments and construction. (NRS 233B.050, AB176, Sec. 46) 1. Pleadings before the Authority must be styled applications, complaints,

answers, motions and.

2. If not otherwise prohibited by law and if substantial rights of the parties will not be

prejudiced, the Authority will allow any pleading to be amended or corrected or any omission in the pleading to be cured.

3. The Authority will and the presiding officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party.

Sec. 91. Pleadings: Applications. (NRS 233B.050, AB176, Sec. 46)

1. A pleading requesting a privilege, right or authority from the Authority must be styled an "application."

2. An application must set forth:

(a) The full name, mailing address and telephone number of the applicant and the full name, mailing address and telephone number of the authorized representative or attorney of the applicant, if applicable;

(b) All material facts that the applicant is prepared to prove and upon which the Authority may base a decision to grant the request;

(c) Required exhibits and such other exhibits as the applicant deems appropriate;

(d) A request for the order, authorization, permission, certificate, relief or permit desired; and

(e) A reference to the particular statutes or regulations requiring or supporting the requested action.

Sec. 93. Pleadings: Petition to adopt, amend or repeal regulation. (NRS 233B.050, AB176, Sec. 46)

1. If a petition requests the adoption of a proposed regulation, it must include, without limitation, the full text of the proposed regulation and the reasons for the requested adoption.

2. If a petition requests the amendment or repeal of an existing regulation, it must include, without limitation:

(a) The regulation or that portion of the regulation in question and the suggested amendment; and

(b) The reason for the amendment or repeal of the regulation.

3. The Authority will convene to consider each petition submitted in accordance with this section and will notify the petitioner within 30 days after the petition is filed of the disposition of the petition.

Sec. 94. Pleadings: Motions. (NRS 233B.050, AB176, Sec. 46)

1. Any request for an order by the Authority, or an

order to show cause, concerning any matter that has been assigned a docket number but has not been finally decided by the Authority must be styled a "motion."

2. A motion must be in writing unless made during a hearing. If a motion is made during a hearing, the motion may be written or oral. Oral motions must be timely made.

3. The presiding officer may order the parties to file one or more affidavits in support or contravention of a motion which has been made.

4. A motion must include, without limitation, citations of any authorities upon which the motion relies.

5. A written motion must be filed with the Authority and served upon all parties of record.

6. The presiding officer may direct that any motion made at a proceeding be reduced to

writing, and filed and served in accordance with this section.

7. A motion that involves the final determination of a proceeding, including, without limitation, a motion to dismiss, will be considered by the Authority at the time of the final decision and order, unless the presiding officer or the Authority determines that an expedited ruling would be in the public interest.

8. The presiding officer may rule on any motion made at a hearing which does not constitute a final determination of the proceeding.

9. A written motion other than one made during a proceeding must be served not later than 10 days before the date set for the hearing unless a different time is specified by the presiding officer.

10. Motions filed by different parties of record but involving the same point of law may be set for hearing at the same time.

11. For the purpose of this section, "party of record" includes, without limitation, all persons who have filed petitions for leave to intervene which are pending at the time a motion is to be filed or served.

Sec. 95. Pleadings: Responses to motions. (NRS 233B.050, AB176, Sec. 46)

1. Any party of record against whom a motion is directed may file a response to the motion.

A response must be in writing unless made during a hearing. If made during a hearing, a response may be written or oral.

2. A written response must be:

- (a) Served upon each party of record.
- (b) Filed with the Authority not later than 7 days after receipt of service of the motion, unless

otherwise directed by the presiding officer.

Sec. 96. Pleadings: Requirements for format; signature; request for hearing. (NRS 233B.050, AB176, Sec. 46)

1. Pleadings must:

- (a) Be properly titled.
- (b) Be signed in ink by each party or an authorized person.
- (c) Include the name and address of each party and, if represented, the name, address and telephone number of the authorized representative or attorney of the party.
- (d) Except an initial pleading, clearly identify the proceeding by title and docket number.
- (e) Set forth a clear and concise statement of the matters relied upon as a basis for the action

or relief requested and an appropriate prayer.

- (f) Be typewritten, printed or reproduced in at least 12-point type on good quality white

paper, which is approximately 8 1/2 by 11 inches in size. Any exhibit or appendix accompanying the pleading must be folded to this size. Information must be presented on only one side of the

paper and must be double spaced, except for footnotes or quotations which are indented. All copies must be clear and permanently legible.

- 2. A pleading initiating a new proceeding must have space for the docket number.
- 3. Regardless of any error in the designation of a pleading, the Authority will accord the

pleading its true status in the proceeding in which it is filed.

4. A signature on the pleading constitutes a representation that:

- (a) The person signing the pleading has read the pleadings;
- (b) To the best of his or her knowledge, there are good grounds to support the pleading;
- (c) The information in the pleading is true to the best of his or her knowledge and belief; and
- (d) The pleading is not filed solely to delay the proceeding.

5. If a person filing a pleading desires a hearing on the matter, a request for a hearing must

be stated in the pleading.

Sec. 97. Pleadings: Filing of pleading. (NRS 233B.050, AB176, Sec. 46) Except as otherwise provided in this section, the original of all pleadings and such additional legible copies as requested by the staff of the Authority must be filed at the office of the Authority in Las Vegas. The staff of the Authority may not request more than nine additional copies of pleadings. If a written protest is made, only the original is required to be filed. The presiding officer may require the parties to file additional copies if needed.

Sec. 98. Pleadings: Answers. (NRS 233B.050, AB176, Sec. 46)

1. A party to a proceeding who desires to contest, an order to show cause or a

complaint or make any representation about it to the Authority may file an answer with the Authority.

2. An answer to an order to show cause or a complaint must:

(a) Be in writing; and

(b) Specifically admit or deny each material allegation and state any new matter constituting

a defense. Matters alleged by way of an affirmative defense must be separately stated and numbered.

3. If an amendment or correction to a pleading is filed before the filing of an answer, the time within which to answer will be computed from the date of service of the amendment or correction unless the Authority or presiding officer directs otherwise.

4. Except as otherwise ordered by the Authority, the facts set forth in an amendment or correction shall be deemed admitted if an answer to the amendment or correction is not filed. If a party wishes to answer an amendment or correction, he or she must file an answer within 15 days after the service of the amendment or correction unless the Authority or presiding officer directs otherwise.

5. Amendments or corrections made after the filing of an answer need not be answered.

6. Failure to file an answer or failure to indicate a jurisdictional defect in an answer does

not waive the right to object to a jurisdictional defect.

Sec. 99. Pleadings: Answers to petitions. (NRS 233B.060, AB176, Sec. 46) An answer to a petition must:

1. Be in writing;

2. Be written so as to advise the Authority and parties of record fully of the nature of the

answer;

- 3. Contain a separate statement and number for each material element of the answer;
- 4. Be signed by the answering party or, if represented, by his or her attorney or other

authorized representative;

- 5. Include the full name, address and telephone number of the answering party; and
- 6. Be filed with the Authority within 15 days after service of the petition to which the answer

is directed, unless the Authority shortens or extends this time.

Sec. 101. Pleadings: Service of process. (NRS 233B.050, AB176, Sec. 46)

1. All documents required to be served on a party by any other party may be served in

Person, email or by mail. If the service is by mail, the service is complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.

2. After the commencement of a proceeding, a copy of each pleading to be filed with the Authority must be served by the pleading party on every other party of record. If a party of record is represented by an authorized representative or an attorney, service must be made on that representative or attorney. Service must be made before or concurrently with the filing of the pleading with the Authority.

3. Upon the advance request of another party, a party serving a document shall telephone the requesting party when the document is ready to be served so that it may be accepted personally by the requesting party in lieu of service by mail.

Sec. 102. Pleadings: Proof of service. (NRS 233B.050, AB176, Sec. 46) There must appear on all documents required to be served an acknowledgment of receipt of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to .....)  
by mailing a copy thereof, properly addressed, with postage prepaid to  
..... Dated at ....., this .....(day) of .....(month) of  
.....(year)

..... Signature

Sec. 103. Oral or informal written complaints: Disposition. (NRS 233B.050, AB176, Sec. 46)

1. The staff of the Authority shall attempt to resolve any oral or informal written complaint made by a passenger against a transportation network company or broker.

2. The staff of the Authority may request that the passenger provide a written

confirmation of an oral complaint.

3. The staff of the Authority shall, within 20 days after receiving an informal written complaint, send a copy of the complaint to the transportation network company or broker against which the complaint is made. The staff may require the transportation network company or broker to file a response to the informal written complaint with the staff pursuant to Section 105.

4. The staff of the Authority shall examine an oral or informal written complaint, any response and any other information obtained by the staff that is necessary for the resolution of the complaint.

5. After completing an investigation of the matter set forth in an oral or informal written complaint, the staff of the Authority shall:

(a) Notify the parties to the complaint of the results of the investigation; and

(b) Recommend any action that the parties should take to resolve the complaint.

6. The staff of the Authority shall inform a customer of his or her right to file a formal complaint if the passenger is not satisfied with the resolution of his or her oral or informal written complaint pursuant to this section.

Sec. 104. Formal written complaints: General requirements. (NRS 233B.050, AB176, Sec. 46) 1. A formal written complaint, other than a formal written complaint filed by a transportation network company or broker pursuant to Section 110, must:

(a) Clearly and concisely state the grounds of the complaint and the facts constituting the

alleged wrongful acts or omissions;

(b) Be accompanied by copies of all supporting documents, such as invoices, bills of lading,

cancelled checks and statements of account;

(c) Include the name and address of the complainant and, if he or she is being represented by an attorney or other authorized representative, the name, address and telephone number of the attorney or authorized representative;

(d) Include the name of the transportation network company or broker against whom the complaint is being made;

(e) Include the date of each act or omission that is the subject of the complaint;

(f) Include the nature of the relief sought; and

(g) Include the signature of the complainant or the attorney or authorized representative of the complainant.

2. The staff of the Authority shall maintain a record of each formal written complaint, including, without limitation:

(a) Each pertinent fact relative to the origin, nature and basis of the complaint;

(b) A description of each action that the complainant has taken or attempted to take to resolve the complaint;

(c) The response of the transportation network company or broker to the complaint, with copies of supporting documents, if any; and

(d) Any other information the staff deems to be relevant to the understanding and resolution of the complaint.

3. The staff of the Authority shall:

(a) Within 15 days after receiving a formal written complaint, send a letter of acknowledgment to the complainant.

(b) Within 20 days after receiving a formal written complaint, send a copy of it to the transportation network company or broker against which the complaint is made and require the transportation network company or broker to file a response to the complaint with the staff pursuant to Section 105.

Sec. 105. Complaints: Response. (NRS 233B.050, AB176, Sec. 46)

1. A transportation network company or broker which receives a request for a response to a complaint shall file with the staff of the Authority a written response to the request within 15 days after receiving the complaint unless, for good cause shown, the staff extends the time for responding.

2. The response must include, without limitation:

(a) A statement that the respondent has successfully resolved the complaint; or

(b) A detailed admission or denial of each material allegation of the complaint and a full

statement of the facts and matters of law relied upon as a defense.

3. The response must:

(a) Be signed by the respondent or, if represented, by the attorney or other authorized representative.

(b) Include the full name, address and telephone number of the respondent and, if

represented, the name, address and telephone number of the attorney or other authorized representative of the respondent.

4. If the respondent fails to file a response with the staff of the Authority within the prescribed time, the staff shall place the matter before the Authority for a determination of probable cause. An unexcused failure of the respondent to respond to the complaint within the prescribed time shall be deemed an admission by the respondent of all relevant facts stated in the complaint.

Sec. 106. Formal written complaints: Investigation and recommendation of action by staff of Authority. (NRS 233B.050, AB176, Sec. 46)

1. When the staff of the Authority receives a response to a formal written complaint, it shall examine the complaint, the response and any other information it has obtained which is necessary for the resolution of the complaint.

2. After completing an investigation of the matter set forth in the formal written complaint, the staff of the Authority shall notify all parties of the results of the investigation and shall recommend any action that the parties should take to resolve the complaint.

Sec. 107. Formal written complaints: Transmittal of unresolved complaint to Authority. (NRS 233B.050, AB176, Sec. 46)

1. If the staff of the Authority cannot resolve a formal written complaint, either because it determines that the complaint cannot be resolved or the complainant is not satisfied with the

recommendation of the staff, the staff shall inform all parties that the complaint has been transmitted to the Authority for review.

2. In addition to transmitting the formal written complaint, the results of its investigation and its recommendation to the Authority, the staff of the Authority shall transmit:

(a) The reasons for the complaint;

(b) The position taken by the respondent; and (c) Any interim action taken by the staff.

→ The staff shall send this additional information to the complainant and respondent.

Sec. 108. Formal written complaints: Dismissal. (NRS 233B.050, AB176, Sec. 46)  
Authority determines that no probable cause exists for a formal written complaint received by the staff of the Authority or if the complaint has been settled and the Authority has received notice of the settlement, the Authority will dismiss the complaint. A copy of the entry in the minutes of the Authority showing the dismissal of the complaint by the Authority and a short statement of the reasons for the dismissal will be served upon the complainant and respondent.

Sec. 109. Formal written complaints: Public hearing; interim relief. (NRS 233B.050, AB176, Sec. 46) If the Authority determines that probable cause exists for a formal written complaint received by the staff of the Authority, it will:

1. Set a date for a public hearing on the complaint.

2. Order appropriate interim relief. If the complaint relates to bills or deposits, the

Authority, without hearing or formal order and in the absence of unusual circumstances, will, upon such terms and conditions as it deems appropriate, forbid discontinuance of service or the issuance of any notice of discontinuance during the investigation of the complaint.

Sec. 110. Formal written complaints filed by transportation network companies, brokers, or motor carriers. (NRS 233B.050, AB176, Sec. 46)

1. The Authority will directly investigate any formal written complaint filed by a transportation network company, broker or certificated motor carrier.
2. Such a complaint must be in writing and contain:
  - (a) The name and address of the complainant and, if represented, the name, address and telephone number of his or her attorney or other authorized representative.
  - (b) The name of the transportation network company or broker against which the complaint is made.
  - (c) A complete statement of the grounds for the complaint, including whenever possible, reference to each statute or regulation which is alleged to have been violated.
  - (d) The date of each act or omission complained of.
  - (e) The nature of the relief sought. The formal written complaint must be signed by the complainant or, if represented, by his or her attorney or other authorized representative.
3. Two or more grounds of complaint concerning the same subject may be included in one formal written complaint, but the grounds must be separately stated and numbered. Two or more transportation network companies, brokers or motor carriers may join in one formal written complaint if their respective causes of action are against the same respondent and deal with substantially the same alleged violation.
4. The complainant shall serve a copy of the formal written complaint on the respondent. Proof of service must be made by affidavit signed by the complainant or, if represented, by his or her attorney or other authorized representative.

Sec. 111. Hearings: Prehearing conference. (NRS 233B.050, AB176, Sec. 46)

1. If a proceeding appears to involve complex or multiple issues, the presiding officer may hold a prehearing conference to accomplish one or more of the following purposes:
  - (a) Formulate or simplify the issues involved in the proceeding.
  - (b) Obtain admissions of fact or any stipulation of the parties.
  - (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.
  - (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary.
  - (e) Rule on any pending procedural motions, motions for discovery or motions for protective orders.
  - (f) Establish a schedule for the completion of discovery.
  - (g) Establish any other procedure which may expedite the orderly conduct and disposition

of the proceedings.

2. Notice of any prehearing conference will be provided to all parties of record. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.

3. The action taken and the agreements made at a prehearing conference:

(a) Must be made a part of the record.

(b) Control the course of subsequent proceedings unless modified at the hearing by the presiding officer.

(c) Are binding upon all parties and persons who subsequently become parties to the proceeding.

4. In any proceeding the presiding officer may call all the parties together for a conference

before the taking of testimony or may recess the hearing for such a conference to carry out the intent of this section. The presiding officer will state on the record the results of such a conference.

Sec. 112. Hearings: Notice of hearing. (NRS 233B.050, AB176, Sec. 46)

1. In addition to complying with the requirements of NRS 233B.121 for a notice of hearing in a contested case, the Authority will include the words "notice of hearing" in any such notice.

4. The Authority will serve notice of a hearing on the parties of record and publish the notice on its website at least 10 days before the time set for the hearing.

5. A copy of the notice will be posted at each office of the Authority at least 3 days before the date set for the hearing.

Sec. 113. Hearings: Continuances. (NRS 233B.050, AB176, Sec. 46) The Authority or presiding officer may, for good cause, either before or during a hearing, grant a continuance of the hearing for the convenience of the parties or the Authority.

Sec. 114. Hearings: Failure of party to appear or respond. (NRS 233B.050, AB176, Sec. 46)

1. If an applicant, petitioner, complainant or intervener fails to appear at the time and place set for hearing, the Authority may dismiss the petition, application, complaint or intervention with or without prejudice, or may, upon good cause shown, recess the hearing to a future date to be set by the Authority to enable the applicant, petitioner or complainant to attend.

2. If an applicant, petitioner, complainant or intervener fails to respond to a request for data from the staff of the Authority within 10 working days after the issuance of the

request, the person designated by the Authority as the Manager of Transportation shall, at the next regularly scheduled meeting of the Authority, move for dismissal of the application, petition, complaint or intervention.

Sec. 115. Hearings: Testimony under oath. (NRS 233B.050, AB176, Sec. 46) All testimony to be considered by the Authority in a formal hearing must be sworn testimony except for matters of which official notice is taken or matters entered by stipulation. Before testifying, each witness shall declare, under oath or affirmation, that the testimony he or she is to give at the hearing will be the truth, the whole truth and nothing but the truth.

Sec. 116. Hearings: Authority of presiding officer. (NRS 233B.050, AB176, Sec. 46) 1. The presiding officer shall:

- (a) Call a hearing to order and take the appearances of the parties who are present. (b) Hold appropriate conferences before or during the hearing.
- (c) Receive and rule on the admissibility of evidence consistent with Nevada Rules of Civil Procedure.
- (d) Rule on the admissibility of amendments to the pleadings.
- (e) Act upon any pending motions or petitions which do not involve a final determination of

the proceeding.

- (f) Make proposed opinions, findings and conclusions of law.
  - (g) Issue appropriate interim orders.
  - (h) Recess the hearing as required.
  - (i) Rule on all procedural matters.
  - (j) Set reasonable limits of time for the presentation of oral testimony.
2. the parties may make opening statements.

Sec. 117. Hearings: Order of proceeding. (NRS 233B.050, AB176, Sec. 46)

1. Applicants, petitioners or complainants may present their evidence first at a hearing. The presiding officer shall designate the stage of the proceeding at which each protestant or member

of the staff of the Authority may be heard. Evidence must be received in the following order unless the presiding officer determines that a special circumstance requires a different order:

- (a) Upon an application or petition:
  - (1) Applicant or petitioner;
  - (2) Staff of the Authority; and
  - (3) Rebuttal by the applicant or petitioner.

(b) Upon a complaint:

- (1) Complainant;

- (2) Respondent;
- (3) Staff of the Authority; and (4) Rebuttal by complainant.

(c) Upon a complaint by the Authority or an order to show cause: (1) Staff of the Authority;

- (2) Respondent; and
- (3) Rebuttal by staff of the Authority.

2. A witness may be cross-examined on issues testified to by that witness by: (a) The Authority;

- (b) The Attorney General; and
- (c) The staff of the Authority.

3. If there is more than one applicant, petitioner or complainant, the witnesses of all applicants, petitioners or complainants may present direct testimony on an issue before any of these witnesses may be cross-examined on that issue, unless otherwise ordered by the presiding officer.

4. If two or more matters are set for hearing at the same time and place, the matter having the lowest docket number will be heard first, unless the presiding officer directs a different order for the convenience of the parties.

Sec. 118. Hearings: Conduct of hearing on proposed regulation. (NRS 233B.050, AB176, Sec. 46) At a hearing on a proposed regulation, the questioning of those persons submitting statements is allowed. The cross-examination of persons who testify is allowed consistent with Nevada Rules of Civil Procedure. The period for comment may be extended by the Authority so that written comments on statements of other persons which are offered at the hearing may be submitted to the Authority.

Sec. 119. Hearings: Order for appearance of witness or production of document. (NRS 233B.050, AB176, Sec. 46)

1. A request by a party of record for an order for the appearance of a witness at any designated place of hearing or for the production of a book, paper or document must be made in the form of a written motion filed with the Authority or presiding officer.

2. A motion for an order to compel the production of a book, paper or document must set forth the reasons which support the issuance of the order and must identify, as clearly as possible, the book, paper or document desired.

3. If the motion is granted, the Authority will issue the order or the presiding officer shall issue the order on behalf of the Authority. Where appropriate, the issuance of the order may be conditioned upon an advancement by the moving party of the reasonable cost of the production of books, papers or documents.

4. The Authority will or the presiding officer shall, upon the Authority's or the presiding officer's own initiative or upon a written request by the party to whom the order is directed, quash or modify the order if it is determined to be unreasonable or oppressive.

5. The Authority or presiding officer may, upon the Authority's or the presiding officer's own initiative, issue an order requiring the attendance and testimony of witnesses and the production of a book, paper, document or other tangible thing.

Sec. 120. Hearings: Objections regarding admissibility of evidence. (NRS 233B.050, AB176, Sec. 46)

1. An objection to the admissibility of evidence may be made by any party of record, and the objection must be ruled on by the presiding officer consistent with Nevada Rules of Civil Procedure. When an objection is made to the admission or exclusion of evidence, the grounds relied upon must be stated briefly. The presiding officer shall provide an opportunity for a party of record to respond to an objection raised by any other party regarding the admissibility of evidence. The responses must be brief and state the specific grounds relied upon.

2. An offer of proof for the record must consist of a statement of the substance of the evidence to which an objection has been sustained.

Sec. 121. Hearings: Prepared testimony. (NRS 233B.050, AB176, Sec. 46)

1., a party to a proceeding shall submit a copy of

prepared testimony and accompanying exhibits to be presented at a hearing to the Authority and to each party of record.

2. An application filed for an adjustment in rates must be accompanied by the prepared testimony of the applicant at the time of filing. If the presiding officer so orders, additional copies of the prepared testimony of the applicant must be provided.

3. After delivery of the prepared testimony to the Authority, amendments to the prepared testimony may be made upon approval of the Authority or presiding officer.

4. Unless otherwise directed by the presiding officer, prepared testimony must be supported by a signed affirmation by the witness and submitted to the Authority as an exhibit., prepared testimony may not be read into the record by the witness upon direct examination. The admissibility of prepared testimony will be determined pursuant to Nevada Rules of Civil Procedure.

Sec. 122. Hearings: Documentary evidence. (NRS 233B.050, AB176, Sec. 46)

1. An exhibit must be limited in size to 8 1/2 by 11 inches when folded, unless otherwise

allowed by the presiding officer. A copy of each documentary exhibit must be furnished to each party of record, and copies of each exhibit must be furnished to the Authority in

such number as requested by the staff of the Authority or the presiding officer. The Authority or presiding officer may not request more than 10 copies of each documentary exhibit. A copy must be submitted to the court reporter or transcriber. If relevant evidence is included in a written or printed statement, book or document of any kind containing other matter not relevant and not intended to be put in evidence, the statement, book or document containing that other matter may not be received or admitted in whole. Counsel or other parties offering the evidence or exhibit shall present, in convenient and proper form for filing, a copy of the relevant portions or, at the discretion of the presiding officer, read these portions into the record. Any documentary

evidence offered, whether in the form of an exhibit or introduced by reference, is subject to appropriate and timely objection.

2. If documents are numerous, such as freight bills or bills of lading, and a party desires to offer into evidence more than a limited number of these documents as typical of the others, an orderly abstract of relevant data contained in these documents may be prepared and offered as an exhibit. Other parties of record may examine both the abstract and the source document.

3. In a proceeding involving detailed accounting exhibits, the presiding officer shall require each party to file with him or her and to serve on each party of record a copy of these exhibits within a specified time before the hearing to enable the parties of record to study the exhibits and to prepare cross-examination with reference to them. An amendment to an exhibit may be made after the exhibit has been filed with the presiding officer if it does not prejudice the rights of any party or if it corrects a clerical or mathematical error.

Sec. 123. Hearings: Resolutions. (NRS 233B.050, AB176, Sec. 46)

1. A properly authenticated resolution of a federal or state agency or division, the

governing body of a city, town, county, regional or other municipal corporation may be received into evidence if it complies with Nevada Rules of Civil Procedure.

2. The resolution will be received subject to rebuttal by adversely affected parties of record as to either the authenticity of the resolution or the circumstances surrounding its procurement. Recitals of fact contained in a resolution will only be received for the limited purpose of showing the expression of the official action of the resolving body on the matters under consideration in the proceeding.

Sec. 124. Hearings: Additional evidence. (NRS 233B.050, AB176, Sec. 46)

1. At the hearing, the presiding officer may order the presentation of further evidence on

any issue. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission of the evidence. The presiding officer shall reserve exhibit numbers for exhibits which are filed late.

2. After the hearing and before the entry of a final decision and order, the Authority or presiding officer may issue an order requesting the submission of additional exhibits. Such an order must:

(a) Specifically delineate the subject matter to be addressed. (b) Specify the date by which the exhibits must be submitted. (c) Require service of the exhibits upon all parties of record.

↳ A party of record may respond to or comment upon such exhibits.

Sec. 125. Hearings: Rulings by presiding officer. (NRS 233B.050, AB176, Sec. 46)

1. All rulings made by the presiding officer regarding the admissibility of evidence are

subject to review by the Authority. Any pending petition or motion that involves a final determination of the proceeding must be referred to the Authority for determination.

2. In extraordinary circumstances, when a prompt decision by the Authority is necessary to promote substantial justice, the presiding officer shall refer the matter to the Authority for determination and may recess the hearing pending the determination.

Sec. 126. Hearings: Consolidation. (NRS 233B.050, AB176, Sec. 46)

1. The Authority may consolidate two or more dockets in any one hearing when it appears

that the issues are substantially the same and that the rights of the parties will not be prejudiced by a consolidated hearing.

2. At a consolidated hearing, the presiding officer will determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of the consolidated proceeding.

3. The presiding officer will apportion the costs of the hearing among the parties in a manner not contrary to statute.

4. Unless the Authority orders otherwise, the Deputy Commissioner will place the same date of issuance and the same effective date, if applicable, on all orders made by the Authority in relation to a consolidated hearing.

Sec. 127. Hearings: Stipulations. (NRS 233B.050, AB176, Sec. 46)

1. With the approval of the presiding officer, the parties may stipulate as to any fact in

issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. This stipulation is binding only upon the parties so stipulating and is not binding upon the Authority.

2. The stipulation may be considered by the Authority as evidence at the hearing. The Authority or presiding officer may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Authority in the determination of the matter.

Sec. 128. Hearings: Interim order. (NRS 233B.050, AB176, Sec. 46) The Authority or presiding officer may, in the course of a proceeding and before entering a decision or a recommended decision, issue an appropriate written interim order. An interim order is not subject to exceptions or petitions for rehearing, reconsideration or reargument, but any party of record aggrieved by the interim order may file a written motion to set aside, stay or modify the order.

Sec. 129. Hearings: Official notice. (NRS 233B.050, AB176, Sec. 46) The Authority or presiding officer may take official notice of documents and matters pursuant to the legal standards established by the Nevada Rules of Civil Procedure

Sec. 130. Hearings: Briefs. (NRS 233B.050, AB176, Sec. 46) In a hearing, the presiding officer may order briefs to be filed within a reasonable time. The original and such copies of each brief as requested by the presiding officer, but not to exceed 10 copies, must:

1. Be filed with the Authority;
2. Contain all legal authority cited therein as exhibits; and

3. Be accompanied by an acknowledgment of or an affidavit showing service on each party of record.

Sec. 131. Hearings: Oral arguments. (NRS 233B.050, AB176, Sec. 46) The Authority may, following the filing of briefs or upon contested motions, set the matter for oral argument upon 10 days' notice to each party of record, unless the Authority considers a shorter time advisable.

Sec. 132. Hearings: Decision by Authority. (NRS 233B.050, AB176, Sec. 46) Unless otherwise specifically ordered, a matter stands submitted for decision by the Authority at the close of the hearing.

Sec. 133. Hearings: Reopening proceedings to receive additional evidence. (NRS 233B.050, AB176, Sec. 46) At any time after the conclusion of a hearing and before the issuance of a final order, the Authority or presiding officer, on the Authority's or presiding officer's own motion, may reopen the proceedings for the taking of additional evidence.

Sec. 134. Hearings: Proposed findings of fact and conclusions of law. (NRS 233B.050, AB176, Sec. 46)

1. The presiding officer may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceeding. The presiding officer will fix the

period within which these proposed findings and conclusions must be filed. No decision, report or recommended order may be made until after the expiration of this period.

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered. Each proposed finding of fact must specifically show, by appropriate references to the transcript, the testimony which supports the statement.

3. An original and such copies of proposed findings of fact and conclusions of law, accompanied by a certificate of service, as requested by the presiding officer must be filed by each party with the Authority, and one copy must be served upon each party of record. A presiding officer may not request more than 10 copies of proposed findings of fact and conclusions of law.

4. Any party of record may petition the Authority for an extension of time in which to file proposed findings of fact and conclusions of law.

Sec. 135. Hearings: Date of issuance and effective date of order. (NRS 233B.050, AB176, Sec. 46)

1. The date of the issuance of an order is the day on which the Deputy Commissioner signs and verifies the order and affixes the seal of the Authority on the order. The Deputy Commissioner shall mail or deliver copies of the order to the parties of record not later than 1 day following the date of issuance. The date of issuance of an order may or may not be the day on which the Authority makes the decision. The Deputy Commissioner shall clearly indicate on each order the date of its issuance.

2. Unless otherwise specifically provided in the order, an order of the Authority is effective as of the date of its issuance.

Sec. 136. Hearings: Copies of transcripts. (NRS 233B.050, AB176, Sec. 46) Any party may obtain a copy of the transcript of a hearing before the Authority from the official reporter upon

payment of the fees fixed therefor. Each transcript must include an index of each exhibit presented at the hearing and copies of each exhibit. The original and two copies of each transcript must be provided to the Authority by the initiating party within 15 business days after the close of the hearing unless otherwise ordered by the presiding officer.

Sec. 137. Declaratory orders and advisory opinions: Petition; hearings. (NRS 233B.050, AB176, Sec. 46)

1. Any interested person may petition the Authority for a declaratory order or an advisory opinion as to the applicability of any statutory provision or any regulation or decision of the Authority. The Authority will retain discretion as to if and how such a petition will be addressed.

2. Hearings will be held by the Authority, if needed, to obtain information necessary or useful in formulating a declaratory order or advisory opinion.

Sec. 138. Administrative fines: Definitions. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) As used in Sections 138-149, inclusive, unless the context otherwise requires, the words and terms defined in Sections 139-141 have the meanings ascribed to them in those sections.

Sec. 139. Administrative fines: "Administrative proceeding" defined. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) "Administrative proceeding" means a proceeding to impose an administrative fine pursuant to section 42 of AB176.

Sec. 140. Administrative fines: "Hearing officer" defined. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) "Hearing officer" means a person designated by the Chairman to conduct an administrative proceeding.

Sec. 141. Administrative fines: "Respondent" defined. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) "Respondent" means a person against whom an administrative proceeding is initiated.

Sec. 142. Administrative fines: Initiation and termination of administrative proceeding by staff of Authority; conduct of, applicable regulations for and intervention in administrative proceeding. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. An administrative proceeding must be initiated by the staff of the Authority as provided in Section 143. The staff may terminate an administrative proceeding at any time before a hearing without prejudice to the initiation of another administrative proceeding based upon the same set of facts.

2. An administrative proceeding must be conducted pursuant to the provisions of chapter 233B of NRS and those provisions of NRS \_\_\_ which do not conflict with the provisions set forth in chapter 233B of NRS regarding notice to parties and the opportunity of parties to be heard.

3. The provisions of Sections 69 - 137, inclusive, apply to an administrative proceeding, as if the hearing officer were the Authority or presiding officer, to the extent that those provisions do not conflict with the provisions of Sections 138-149, inclusive.

Sec. 143. Administrative fines: Contents, service and filing of complaint to initiate administrative proceeding; answer to complaint. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. The staff of the Authority may initiate an administrative proceeding by:  
(a) Serving a copy of a complaint upon the respondent by personal delivery or by mailing by

certified mail, return receipt requested, to the last known address of the business or residence of the respondent; and

(b) Filing the complaint with the Authority.

2. The complaint must be signed by a member of the staff of the Authority and contain:

(a) The name of the respondent;

(b) A concise statement of the facts upon which the imposition of a fine is allegedly grounded; and

(c) Any other matter required by law.

3. The respondent may file with the Authority an answer to the complaint not later than 15

days after it is served.

Sec. 144. Administrative fines: Settlement of administrative proceeding. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. The staff of the Authority may enter into an agreement with a respondent for the settlement of an administrative proceeding. The agreement must be signed by the staff and the respondent, and state that the respondent consents to the imposition of a fine in a specific amount.

2. Upon entering into such an agreement:

(a) The staff of the Authority shall submit the agreement to the Authority;

3. The agreement is not effective unless approved by the Authority. If the Authority approves the agreement, it will enter an appropriate final order. If the Authority does not approve the agreement, the administrative proceeding must be set for a hearing.

Sec. 145. Administrative fines: Powers and duties of hearing officer. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. A hearing officer shall:

(a) Subscribe to the constitutional oath of office before exercising any of the powers or performing any of the duties of his or her office.

(b) Conduct a fair and impartial hearing in accordance with the law.

(c) Conduct the entire hearing on the record and require each party or the party's counsel to identify himself or herself before presenting evidence.

(d) Establish the order of presentation of the evidence by each party.

(e) Ensure that the hearing proceeds with reasonable diligence and the least delay practicable.

(f) Prepare a proposed decision for review by the Authority.

(g) Deliver the record of the hearing and the proposed decision to the Authority.

2. If not otherwise prohibited by law and if substantial rights of the parties will not be

prejudiced, a hearing officer may allow amendment of the complaint and answer before conducting a hearing.

Sec. 146. Administrative fines: Appeal of procedural ruling by hearing officer. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. Any party to an administrative proceeding conducted by a hearing officer may appeal a ruling of the hearing officer on any procedural matter to the Authority by filing a request for further consideration with the hearing officer within 15 days after the ruling is made, or within the period prescribed by the hearing officer. The request must include, without limitation, grounds for review of the ruling by the Authority.

2. The hearing officer shall transmit:

(a) The request for further consideration and any response to the request;

(b) His or her ruling on the procedural matter; and

(c) A memorandum which explains those parts of the hearing officer's ruling which are the

subject of the appeal,

→ to the Authority not later than the time the hearing officer delivers the proposed decision pursuant to Section 145.

3. Except as otherwise provided in subsection 4, the Authority will enter a decision on the appeal at the same time it rules upon the proposed decision of the hearing officer received pursuant to NAC \_\_\_\_.4015.

4. If the hearing officer finds that a ruling on the appeal is necessary to prevent detriment to the public interest or irreparable harm to any person, the Authority may enter a decision on the appeal before it rules on the proposed decision of the hearing officer received pursuant to Section 145.

Sec. 147. Administrative fines: Action by Authority. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42)

1. The Authority will review the decision of a hearing officer and enter a final order affirming, modifying or setting aside the decision.

2. If a respondent fails to appear at the time and place set for an administrative proceeding, the Authority may impose a fine for the violations alleged in the complaint.

3. In determining the amount of a fine to be imposed pursuant to an administrative proceeding, the Authority may consider:

(a) The seriousness of the violations alleged in the complaint which were demonstrated to have been committed by the respondent;

(b) Any hazard to the health or safety of the public resulting from those violations; (c) Any economic benefit received by the respondent as a result of those violations; (d) Any mitigation or aggravation by the respondent of the effects of those violations; (e) The extent to which the respondent demonstrates his or her good faith;

(f) Any previous history of violations by the respondent; (g) The amount necessary to deter future violations; and (h) Any other appropriate matter.

Sec. 148. Administrative fines: Payment of fine. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) A fine imposed pursuant to an administrative proceeding is due and payable within 20 days after the final order of the Authority imposing the fine.

Sec. 149. Administrative fines: Remedy not exclusive. (NRS 233B.050, AB176, Sec. 46, AB176, Sec. 42) The provisions of Section 138 - 149, inclusive, do not preclude the commencement or pursuit of any additional remedies for the commission of the acts upon which an administrative proceeding is based.

Public notice of application. (AB176, Sec. 46)

1. If an application is filed and the filing is not rejected pursuant to Section 31, the Deputy

Commissioner shall cause a notice of the application filing to be published within 10 working days after acceptance unless circumstances dictate otherwise.

2. If the Deputy Commissioner determines that the proposal will have a statewide effect, he or she shall cause the notice to be published at least once in four or more newspapers of general circulation in this State, no two of which are published in the same county.

3. If the Deputy Commissioner determines that the proposal will have an effect on a limited number of counties, he or she shall cause the notice to be published once in a newspaper of general circulation in each county affected. If there is no newspaper published in an affected county, the Deputy Commissioner shall cause the notice to be published in a newspaper in an adjoining county.

4. The notice must be an advertisement which is reasonably calculated to notify affected persons and must include, without limitation:

(a) The name of the applicant or the name of the agent for the applicant; (b) A brief description of the applicant's proposal;

(c) The location at which the proposal is on file for the public; and

(d) The date by which persons must file a protest with the Authority.

5. The Deputy Commissioner shall cause the notice to be published in the appropriate newspapers not less than 3 working days before the proposal becomes effective.

6. The applicant shall pay the cost of the publication.

In addition to the scalable portion of the application fee measured

by number of drivers and set forth in Section 38.

A person shall not drive for a transportation network company unless the person has been included on a registry of active drivers approved by the Authority pursuant to this section. 2. The Authority shall add to its registry of approved drivers each prospective driver who satisfies the requirements of this section.

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adding a driver to the registry, the Authority shall:

(a) Require an affidavit from the transportation network company affirming that the prospective driver has met all the requirements contained within

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(b) Require proof from the transportation network company that the prospective driver has passed a pre-employment controlled substances test;

(c) Require proof from the transportation network company that the prospective driver is employed, under a contract or lease agreement, or has an offer of employment, a contract or a lease agreement that is contingent on the prospective driver being added to the registry pursuant to this section; and

(d) Within the 3 years immediately preceding the date on which the employee DRIVER?? submitted to the certificate holder an application to be a driver of a traditional limousine or livery limousine:

(1) Has not failed to appear for a hearing before the Authority which resulted in the employee being found to have violated a provision of this chapter or chapter \_\_\_ of NRS;

(2) Has not been found by the Authority to have violated the provisions of this chapter or chapter \_\_\_ of NRS more than five times; and

(3) Has not failed to pay on or before the due date any fine assessed against the employee by the Authority What

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The Authority will create and maintain a list of persons who are not qualified to drive a traditional limousine or livery limousine pursuant to paragraph (d) of subsection (2).

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4. Entry on the approved driver registry pursuant to this section is valid for one year, but lapses if the driver ceases to be subject to an agreement as described in Section 5(2) with the carrier identified in the affidavit submitted pursuant to paragraph 2(a) of this Section or an agreement as described in Section 5(2) with a different carrier. A transportation network company must notify the Authority within 10 days after the lapse of an agreement and the driver must be re-entered on the registry pursuant to this section before driving for a different carrier.

5. For each prospective driver submitted for entry onto the registry, a transportation network company shall pay to the Authority:

(a) For an original entry onto the registry, a scalable portion of the transportation network company's application fee in the amount of \$50.

(b) For the renewal of a registry entry, a scalable portion of the transportation network company's application fee in the amount of \$10.

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Except as otherwise provided in this section, motor vehicles operating in conjunction with a transportation network company permit shall have the name of the carrier operating the vehicle firmly attached to the vehicle in letters not less than 2 inches high in sharply contrasting colors which

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2. Except as otherwise provided in subsection 3. every motor vehicle operating in conjunction with a transportation network company permit shall have the symbols "TNC" and the number of his or her permit, painted or affixed upon each side of the vehicle in the manner, size and style prescribed in subsection 1.

3. If the motor vehicle has firmly affixed and exhibited on the vehicle a symbol or printed sign that has been approved by the Authority and is visible from a distance of at least 50 feet, the name of the transportation network company is not required to be displayed as prescribed in subsection 1. The number of the permit of the carrier and the symbols "CPCN" must be not less than 2 inches high and must be placed on either the rear

bumper or at the rear of the vehicle. Personal vehicles, only driving at limited times. Can not permanently affix trade dress, confuse people

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A transportation network company or his or her officers, employees, agents,

representatives or drivers shall not solicit passengers.

2.

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4. As used in this section:

(a) "Passenger curb loading zone" has the meaning ascribed to it in NRS 484B.033. (b) "Solicit" includes, without limitation, inducing or attempting to induce persons by

communication or other action to be transported. The term includes, without limitation:

(1) Initiating conversation with potential passengers;

(2) Shouting information;

(3) Waving signs;

(4) Waving arms or hands; (5) Flashing lights;

(6) Ringing bells;

(7) Blowing horns;

(8) Blocking access to other transportation network companies or transportation network companies; or

(9) Any other activity designed to attract passengers.

↪ unless the passenger has prearranged for the transportation through the transportation network company's application.

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not leave his or her vehicle unattended in any passenger curb loading zone, unless the driver is seeking a specific passenger who has requested that a vehicle be dispatched to the location through the transportation network company app.

2. As used in this section, the term "passenger curb loading zone" has the meaning ascribed to it in NRS 484B.033.

Adoption and enforcement of federal regulations for transportation network company safety. (ABI76, Sec. 46)

Adoption and enforcement of certain federal regulations for motor carrier safety.

1. The Authority hereby adopts by reference the regulations contained in 49 C.F.R. Part 382.301, 382.303, 382.305, and 382.307, and the related regulations referenced therein, as those regulations existed on May 30, 2012, with the following exceptions:

(a) References to the “employer” are amended to refer to the “transportation network company” as defined in Section 7 of these regulations.

(b) References to the “driver” are based upon the definition of driver set forth in Section 6 of these regulations.

(c) The phrase “safety-sensitive functions” is defined as any function involving the transportation of a passenger for compensation.

(d) References to “commercial motor vehicle” are amended to refer to any motor vehicle that is operated by a driver pursuant to an agreement with a transportation network company to receive connections to potential passengers and related services from a transportation network company in exchange for the payment of a fee to the transportation network company.

2. Enforcement officers and compliance enforcement officers are authorized to enforce the provisions of this chapter of the Nevada Revised Statutes and Nevada Administrative Code.

3. To enforce these regulations, enforcement officers and compliance enforcement officers of the Authority may, during regular business hours, enter the property of the transportation network company and the vehicles of permitted drivers to inspect records, facilities, and vehicles.

4. The volume containing 49 C.F.R. Part 382.301, 382.303, 382.305, and 382.307, and the related regulations referenced therein, is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of \$37. The volume containing 49 C.F.R. Part 40 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, at the price of \$66. The volumes are also available free of charge at the Internet address <http://www.gpo.gov/fdsys>.

IMPORTANT

You have been transported in a (name of transportation network company) vehicle.

(b) Refund or remit in any manner or by any device any portion of the rates, fares or charges so specified except upon orders of the courts or the Authority, or extend to the shipper or person any privilege or facility in the transportation of passengers or property except as specified in the tariffs.

(c) Submit a bid to provide services in any form or manner which is not in conformance with the permit he or she holds.

(d) Use any artifice or subterfuge, or billing or accounting practice in lieu of an authorized commission. The fare or rate charged to the passenger or shipper may not be greater than or different from the fare or rate specified in the tariffs in effect at the time because of the authorized commission.

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Except as otherwise provided in subsection 6, a commission or referral fee authorized pursuant to this subsection must not exceed 10 percent of the rate, fare or charge specified in the carrier's tariffs for the type of service that the designated agent has arranged for the carrier to provide.

3. A designated agent arranging or providing transportation on the vehicles of any permitted transportation network company shall not charge, demand, collect or receive a greater, lesser or different compensation for the transportation of persons or property or any service in connection therewith than the rates, fares or charges specified in the transportation network company's tariffs.

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4. All tickets issued by a carrier or its designated agent must identify the charge to the passenger for the service or transportation purchased. That charge may not be different from the tariff on file with the Authority.

5. A carrier that uses or intends to use the services of a designated agent within this State shall keep a complete list of its designated agents which must be made available for review by the staff of the Authority.

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Prohibited acts. (AB176, Sec. 46) Any person, whether a transportation network company or a broker, or any officer, employee, agent or representative thereof, who knowingly offers, grants, gives, solicits, accepts or receives any rebate, concession or discrimination in violation of any provision of Sections 56 - 57, inclusive, or who, by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease or bill of sale or by any other means or device knowingly and willfully or otherwise fraudulently seeks to evade or defeat the provisions of Section 56 - 57, inclusive, will be subject to citation by the Authority.

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Except as otherwise provided in subsection 3, a transportation network company who is subject to the provisions of Sections 1 - 149, inclusive, shall not interrupt any service established pursuant to the provisions of NRS chapter \_\_\_\_, inclusive, for more than 48 hours in any 180-day period without filing a petition and obtaining an order granting the petition from the Authority. The Authority will give public notice and, if a protest is filed, hold a hearing on the petition before granting the petition. The Authority may hold a hearing on the petition if no protests are filed. If the Authority does not act on the petition within 45 days after its filing, the petitioner may temporarily suspend operations until a final order is entered by the Authority.

2. A carrier who interrupts such service for less than 48 hours must provide notice to the Authority if the service being interrupted is the transportation of passengers. A notice required pursuant to this subsection must include, without limitation, the justification for the interruption of service. Financial or economic hardship may not be used to justify

such an interruption. An interruption of less than 48 hours may not be renewed or extended unless the carrier files a petition and obtains an order in accordance with subsection 1.

3. If an interruption of service for more than 48 hours is caused by an unforeseeable event which is beyond the control of the carrier, the carrier must provide written notice to the Authority within 24 hours after the event. If service is not resumed within 10 days after such an interruption, the carrier must file a petition in accordance with subsection 1.

4. An order of the Authority granting the temporary interruption of service expires 180 days after the date on which the petition was filed. If the carrier has not resumed service on a permanent basis upon the expiration of such an order, the staff of the Authority shall, within 30 days after the expiration of the order, forward a recommendation to the Authority stating whether the Authority should issue an order to show cause why the permit of the carrier should not be revoked.

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Gratuities may be accepted only if processed and paid through the transportation network company.

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For purposes of this section, a driver shall be deemed on duty at any time the driver is providing transportation services on behalf of a transportation network company or logged into the digital network or software application service of a transportation network company.

3. Notwithstanding any provision of this section to the contrary, a driver shall not under any circumstances be on duty longer than 16 hours within a period of 24 consecutive hours.

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The method must be approved by the Authority before use by the transportation network company.

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more than eight occupants, including the driver, in his or her vehicle at any one time.

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Sec. 66. Drivers: Applicability of statutes and regulations. (AB176, Sec. 46) The Authority will deem that a driver who is on-call, as that term is defined in this chapter, is subject to the provisions of this chapter of the NAC and chapter \_\_\_ of NRS.

Vehicle inspection and registration. (AB176, Sec. 27. AB176, Sec. 46)

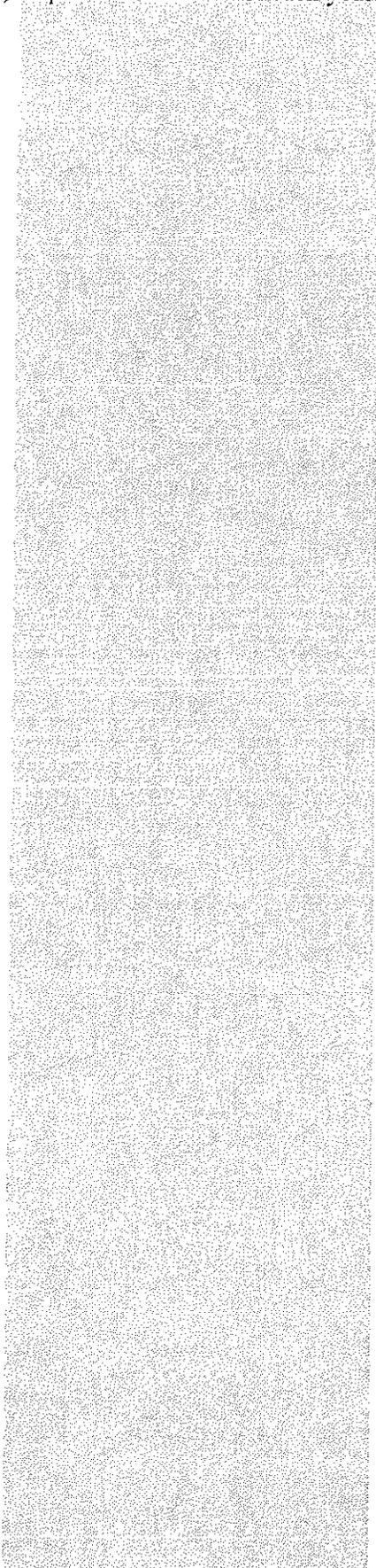
1. Before permitting a vehicle to be placed into service by or through a transportation

network company, the transportation network company shall provide an affidavit to the Authority confirming the vehicle has met all of the requirements contained within AB 176, section 31;

2. Upon receipt of documentation identified in subsection 1 of this section, the Authority may issue a decal for such vehicle which:

(a) Shall be affixed to the lower right hand corner of the vehicle's windshield, or the transportation network company may design and affix its own decal with permission of the Authority;

(c) Expires on June 30 of each year. How do we manage this?



Sec. 68.

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Seems redundant to the section 46 ability to inspect for enforcement. Recommend one section covering enforcement inspections of vehicles.

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placing a sticker on the windshield indicating the vehicle is immediately removed from service

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and a notice of repair is filed by the transportation network company with the Authority

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4. An authorized carrier shall maintain current records for each driver and of the inspection, maintenance and repairs of each vehicle. These records must be maintained and made available for inspection by the Authority pursuant to Section 47.

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4. A person, other than a complainant or an applicant, petitioning for affirmative relief must be styled a "petitioner."

5. Any person, including, without limitation, a state or local governmental entity, who objects to an application, petition or other matter and who files a protest pursuant to Section 100 or makes a statement at a hearing must be styled a "protestant." The filing of a protest does not make the protestant a party of record.

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(a) Shall not disclose the information unless the confidentiality of the information is waived. The confidentiality of information shall be deemed to be waived if:

(1) The person who requested that the information not be disclosed makes the information available to the public or otherwise authorizes the disclosure of the information; or

(2) The Authority or presiding officer enters an order which authorizes the disclosure of the information.

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**Michael Hillerby**

**7/21/15 3:38 PM**

Sec. 92. Pleadings: Petitions. (NRS 233B.050, AB176, Sec. 46)

1. A pleading praying for affirmative relief, other than an application, motion, answer or complaint, must be styled a "petition."

2. If the subject of any desired relief is not readily apparent or specifically covered by

Sections 1 – 149, inclusive, a petition seeking that relief and stating the reasons relied upon may be filed. The petition will be handled in the same manner as other petitions.

3. If the Authority does not grant, deny or set a petition for further proceedings within 60 days after the date on which the petition is received by the Authority, the petition shall be deemed denied.

4. If the Authority sets a petition for further proceedings, the Authority will rule on the petition within 120 days after the date on which the Authority set the petition for further proceedings.

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**Michael Hillerby**

**7/21/15 3:40 PM**

Sec. 100. Pleadings: Protests. (NRS 233B.050, AB176, Sec. 46)

1. Any objection by a person, who is not a party of record, to an application, petition or other matter must be styled a "protest."

2. A written protest must legibly set forth a clear statement of the matter to which an objection is made.

3. The Authority will make available a copy of a written protest to the parties against whom

it is directed.

4. Even if a hearing on a written protest is not required by law, the Authority will notify the

parties of record and hold such a hearing if the public interest will be served.

A protest at a hearing may be oral or written.

At a hearing, the presiding officer shall allow any protestant to enter an appearance in

the proceeding. A protestant who desires to participate as a party of record in a proceeding must file a written petition for leave to intervene unless the presiding officer upon good cause shown allows an oral petition for leave to intervene. A protestant is entitled to participate as a party of record only to the extent that leave to intervene is granted.

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2. The Deputy Commissioner shall file or cause to be filed an affidavit of publication with the Authority.

3. The Authority will cause such a notice to be published in an advertisement of at least 1 column inch by 3 inches, with a border on all sides, in newspapers selected as follows:

(a) If the Deputy Commissioner determines that the subject matter of the hearing will have a statewide effect, the notice will be published at least once in four or more newspapers of general circulation, which are published in this State, no two of which are published in the same county; or

(b) If the Deputy Commissioner determines that the subject matter of the hearing will have an effect on a limited number of counties only, the notice will be published once in a newspaper of general circulation published in each county where affected members of the public reside. If

there is no newspaper published in a county where affected members of the public reside, the notice will be published in a county adjacent to the county.

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the following matters:

1. Rules, regulations, official reports, decisions and orders of the Authority and any other agency of the State.

Contents of decisions, orders and permits issued by the Authority.

Matters of common knowledge and technical or scientific facts of established character.

Official documents, if pertinent and properly introduced into the record of formal

proceedings by reference. A proper and definite reference to a document must be made by the party offering the document, and the document must be generally circulated to each party of record.

**From:** Jeff Kirk [mailto:jeffkirk@gmail.com]

**Sent:** Monday, July 20, 2015 3:24 PM

**To:** JIM DAY

**Subject:** Uber/Lyft suggestions - from a lawyer who's already helped regulate TNCs

Hi James,

Please allow me to introduce myself: I'm Jeff Kirk, a resident of Austin who was in a similar position as yours last year. The Austin City Council appointed me to their working group tasked with developing a local regulatory infrastructure for TNCs. I was selected primarily because of my background in consumer law, and I ended up being one of the only members of the group who wasn't a direct stakeholder in the process. As was the case then, I'm a neutral arbiter with no "skin in the game," as it were.

Our group's work spanned a total of five months, and the end result was a TNC ordinance approved 6-1 by the city council. Since then I've advised, both formally and informally, various local and state officials in other parts of the country who are working on legalizing TNCs. I read about what's been transpiring there in Nevada after stumbling across today's Road Warrior column in the Review-Journal. Having been through this particular wringer myself, here are a few suggestions on how to proceed -- and please note that I would be more than happy to answer any additional questions you might have:

1. **Close future meetings to the general public.** Seriously, this was one of our first decisions -- and in hindsight one of our best. While I'm normally an advocate of open government, the TNC topic is an exception. It is simply not feasible to get anything accomplished in a reasonable time frame using an open-forum process, given the extent to which parties opposed to TNCs -- 99% of whom are either taxi-franchise owners, lobbyists or drivers -- insist on belaboring literally every single point. While taxi advocates are virtually certain to be infuriated by the notion of closed meetings ... well, tough you-know-what. Speaking of which...
2. **Tune out taxi-industry complaints. ENTIRELY.** Taxi-franchise owners will **never** get on board with adding TNCs to any given market, because they know full well that Uber and Lyft represent an existential threat to their businesses -- and rightly so, seeing as the two companies have succeeded in building the proverbial "better mousetrap." Further, taxi interests are exceptionally well-organized, to the extent of developing a de facto nationwide "playbook" for how to (attempt to) cripple TNCs in the knees from the get-go. If you've already heard -- and I'm guessing you have -- any remarks from taxi-industry parties about "public safety concerns" or a "level playing field," know that those have been two of their most common anti-TNC arguments in virtually every American city. Both arguments are highly misleading, but I'll get to that in a sec.
3. **Separate fact from myth.** Judging from today's Road Warrior column, Nevada regulators appear to have bought multiple myths sourced directly from the taxi lobby. One of these false boogeymen is the notion of "driver impersonators" running amok. Quite simply, the number of times this has *actually* happened in other cities can be counted on one hand -- and keep in mind that Uber alone provides well over a million rides PER DAY across the globe. Similarly, the taxi-industry's insistence on fingerprint-based background checks is another false canard. While crimes committed by Uber or

Lyft drivers invariably receive an onslaught of media attention, that's primarily because the two companies (particularly Uber) are in such a high-profile position. Again, the number of crimes *actually* committed is borderline-microscopic in comparison to the literal hundreds of millions of rides the two companies have offered to date. The fact that either TNC can almost instantly ID the culprit in any crime committed by a driver serves as a rather strong deterrent against it. (Note that this is not the case for taxis, given that no records may exist of a driver picking up a fare he intends to victimize, plus victims almost never remember driver names or vehicle tag numbers.)

4. **Understand the problems with respect to trade dress for private vehicles.** I assume you're familiar with the "trade dress" term, but if not, it simply refers to the various types of visual ID employed by ground-transportation providers so customers can identify which vehicle is "theirs." In a nutshell, this is one of the main areas where there can never be a reasonable "level playing field" between taxis and TNCs. Taxi vehicles are purpose-specific, and in most cities they're driven a total of over 20 hours per day (shared among multiple drivers). The vast majority of TNC vehicles, in contrast, are used for work purposes less than 15 hours per *week*. (Roughly 75% of TNC drivers work 15 hours or fewer per week, and over 80% work fewer than 20.) As such, it simply isn't reasonable for them to be required to affix any permanent logos or stickers to their vehicles -- and it's **absolutely** unreasonable to require permanent stickers AND mandate that they be visible from a distance of 50 feet, as Nevada regulators are apparently considering.

Finally, here are some specific suggestions for how to address the Transportation Authority's concerns, with direct cites to the most recent draft of the proposed TNC bill. Also included are some minor suggestions with respect to specific verbiage in it:

- **Sec. 24:** I would add the word "exclusively" after "[TNC] means an entity that..." Taxi companies are increasingly using apps of their own, so this word change clarifies things somewhat.
- **Sec. 38(2)(d):** This part is unclear - is a TNC driver *required* to already have a limo or livery license? If so I would strongly advise eliminating this proviso.
- **Sec. 38(5):** Uber and Lyft drivers in other cities usually pay for their own operating permits, so I'd suggest changing this to state "...a transportation network company **or the prospective driver** must pay..." (changes in bold, both here and from this point forward).
- **Sec. 43 (Vehicle ID):** While I don't think it's reasonable, as already stated, to require TNC drivers to affix permanent decals of some sort onto their vehicles, keep in mind that every vehicle on the road **already has** a "permanent decal" -- it's called a license plate! Both Uber's and Lyft's apps **always** provide the license plate numbers of cars dispatched to pick up **every** passenger. Moreover, passengers also automatically receive photographs of both drivers and their vehicles, as well as the make and model of the latter. Aside from that, either a magnetic sign and/or windshield placard should readily suffice. (Also, just FYI, I don't think there's any possibility Uber or Lyft would agree to all three sections of this provision. Nothing even *close* to these specs has been required of their drivers anywhere else in the country -- or, actually, the world.)
- **Sec. 46:** State-run vehicular inspections are another one of the taxi industry's favorite roadblocks from TNCs. Such regs are for the most part pointless (not to mention costly to the state): both Uber and Lyft already perform 19-point inspections on every prospective

driver's vehicle, plus every state I'm aware of requires annual inspections of every privately owned vehicle regardless.

- **Sec. 49:** Let's just say this entire section is overkill to an extreme degree. Personally, I'd leave 49(1) in place and otherwise table the "driver impersonation" matter entirely unless/until it proves to be a \*legitimate\* issue -- which it almost certainly won't, unless Vegas somehow proves to be an outlier versus every other American city.
- **Sec. 52:** Ditto. (I honestly don't recall *ever* seeing a reference to federal regulations in a TNC statute or ordinance.)
- **Sec. 53:** I assume this section is in reference to the ADA. I don't know if you're aware of it, but federal courts have broadly decided that taxis and other for-hire vehicles owned by private businesses do not qualify as "public entities" under the auspices of the Act (and are thus not required to provide special accommodations for the disabled - though many *states* have laws to this effect).
- **Sec. 57:** More overkill, plus it fails to explicate that Uber and Lyft should be permitted to initiate surge pricing during periods of peak demand. (And just FYI, any restriction on surge pricing will be a dealbreaker for either Uber or Lyft.) I would suggest clarifying this section to indicate that a passenger must be made aware *at the time they're requesting a ride* of a) that surge pricing is presently in effect, and b) the specific surge multiple being charged. (Both Uber and Lyft already do each of these things.)
- **Sec. 60:** I'm not sure why this part is in there, but just FYI, a significant percentage of Uber and Lyft drivers drive for both companies; moreover, Uber and Lyft themselves have no problem with this practice. I'd either clarify the section or scrap it altogether.
- **Secs. 67 & 68:** Again, Uber and Lyft already self-regulate in this regard, with no known problems whatsoever.
- **Secs. 69-149:** I'm admittedly not familiar with the specifics of Nevada law, but I'm unclear why any of this material is necessary within the body of the bill. It appears to be almost entirely redundant, since I assume it merely repeats what already exists in the Nevada Rules of Civil Procedure. Just my two cents.

Anyway, I'm sure you're probably frazzled at this point, and I sincerely hope the suggestions and commentary above is helpful! Again, please feel free to shoot me a line if you need an assist on something.

Regards,

Jeff Kirk

**From:** Karen Lee [mailto:kelee759@gmail.com]

**Sent:** Tuesday, July 21, 2015 11:16 AM

**To:** JIM DAY

**Subject:** Uber

Dear Sir:

As a 21 year resident of Las Vegas, I have grown more disenchanted by the taxi companies servicing our fine city. Numerous times I have utilized taxi services (from the Strip, the airport, and my residence) and have found that many of the drivers are less than thrilled to have a 'local' in their car, directing them the shortest route to the desired location. Additionally, on at least two occasions I had called for a taxi to come to my residence and waited over an hour, to find that a cab had not even been dispatched (I live less than 5 miles east of the Strip.)

I have watched and heard with great interest the possibility of Uber and Lyft being able to serve our community. There has been a great deal of negativity about all that can go wrong with these drivers operating without the benefit of the regulatory measures that taxi and limousine companies operate under. A recent article in the Review-Journal under the Road Warrior (Velota) column discusses a proposal about attaching signage (not less than 2 inches high), that the vehicle can be identified as that driven by an Uber or Lyft driver. One reason for this identification was to ensure that the vehicle had in fact passed inspection and also to deter those that would attempt to pass themselves off as Uber or Lyft drivers??

I'm not sure if you've ever even hailed an Uber ride (in a city that has Uber) or you would know the following: Once an Uber driver 'accepts' the ride, their vehicle description as well as a picture of their license plate and driver shows up on the recipient's app. Upon the car's approach, you can see a U in their lower right windshield that matches the U on the app, identifying this car even quicker. The person waiting for the ride can also track the exact location and arrival time of the driver to their pick-up location. Not only that, but when the driver accepts the ride, Uber automatically covers the ride with a million dollar policy. I had the opportunity last month to use Uber twice while in San Francisco. The vehicles were clean, quiet, and the drivers were super polite and nice. Additionally, both drivers offered cold bottled water and snacks (no charge) for a relatively short ride. One of those rides, my friend and I used the Share Ride option and another female was connected to our need for a ride...lowering the cost to the user and saving the environment with the need for two vehicles going the same destination! According to both drivers that I talked with about Uber, they said that their cars have to be kept clean and pass the strict inspection of their vehicles at designated locations used by Uber. Finally, neither driver or rider can accept a new ride or hail one without having rated the driver/rider first. This allows for unscrupulous drivers or obnoxious riders to be barred from using the app.

As with most things new, people put up all types of arguments and excuses for why new technology and change are unwelcome. I truly hope that this long-standing monopoly held by the taxicab and limousine companies can be broken, once and for all. I believe that there is room for both to operate in this town, as locals are finding it difficult to get taxis to come to residences. As a responsible person that might want to go to a show and have a couple of drinks, but don't want to drink and drive,

Uber would be my first choice for getting from my residence to the show and then, a taxi home if the show is on the Strip. (I tried this once and waited over an hour for a taxi to my house to go to MGM for a concert and 3 phone calls to dispatcher. I ended up having to drive anyway to Harrahs and take the monorail to MGM...no drinks for me, as I would have to drive home.)

Please feel free to contact me at (702)443-1633 for any additional clarification or comments. As a disclaimer, no, I am not employed by Uber or Lyft.

*Karen Lee*

Good afternoon Mr. Day my name is Lincoln Mihaere we met briefly this morning at the NTA office thank you for your courtesy and time. I have lived in Las Vegas on and off for 20 years. I currently work at the Hard Rock Hotel and Casino and at the Wynn Resort and Casino as a Doorman at both properties. I have a few suggestions and concerns about regulations concerning Ride sharing companies. Ride sharing companies are innovative and user friendly I do not oppose technology yet when technological advances break current laws in place to protect the public and operator there is an issue at hand. Governor Sandoval already passed the bill allowing Ride sharing companies in Nevada so we have a huge Problem that needs to be solved.

1. Ride sharing companies should not be allowed on the strip/McCarran Airport.

Ride sharing companies should not be allowed on the strip. Taxi and Limousine companies pay for licensing, medallions, and city fees to operate. They should be rewarded with the most profitable area in Las Vegas. There should be a boundary for ride sharing companies not to operate per se on the west side of the strip to Arville or Decatur, and to the east side of the strip Swenson or Maryland parkway. Casinos are set up for taxis to pick up and drop off in a certain area as well as limousine staging areas add ride sharing to that equation and it could get out of control. I work on a casino drive and the last thing I need is for 10 uber drivers trying to pick up somebody or trying to hail a ride. Even if there were designated areas to pick up for a ride share company there is always going to be drivers who push the limits. Some taxi drivers try to pick up when dropping off so for a ride share driver who I cannot identify as driver or friend how can we punish drivers for attempting to do this? McCarran Airport is also off limits to ride share companies again to lawfully pick up at the airport, Taxi and Limousine companies need to pay for a permit and have a transponder in there car. Ride sharing companies should pay the same concessions as the Taxi and Limousine companies do if they want to pick up anywhere in Las Vegas. Stiff penalties should be implemented to guarantee everyone is playing by the rules or there could be a free for all.

2. Taxi companies charge on a meter depending on distance and time 365 days a year. Ride sharing companies do not.

Ride sharing companies give an estimate of the cost of a ride but during busy times they implement surge pricing they say is to encourage other drivers to get on the road. Do Taxi companies charge more during conventions, Fight weekend, New Year's Eve, Memorial Day weekend, EDC, Concert breaks, Show breaks and Club breaks? They do not, if the estimated number of ride sharing cars are said to be 10,000 cars that poses another question? Is there a cap on the amount of cars that are used for Ride Sharing?

3. How many Cars will be allowed to Ride Share and how will it affect traffic in Las Vegas?

Ride sharing companies are causing a large amount of traffic it's been proven in big cities across the nation. In San Francisco, there are 11,000 ride sharing cars vs. 1,500 taxis they are outnumbered 10 to 1. If that happened here getting around the strip or around Las Vegas would be a nightmare but ride sharing companies do not care the more the better or the less the better they get bigger surge fares. Laws are put in place to protect the consumer even if they are incoherent (I.E. Intoxicated). Imagine waking up to a huge fare that you agreed to while intoxicated its happened countless times and will not end unless measures are taken. Taxis charge the same rate 24/7 365 intoxicated or not.

4. Are Ride sharing companies really safe for the consumer and Driver?

Ride sharing companies do have liability insurance up to a million dollars I believe it covers when the app is in use. Does it cover the consumer yes does it cover the driver no. If

a driver is in an accident if he does not have commercial insurance which is required by every Taxi and Limousine company they are going to be in trouble and not covered possibly be charged criminally. Insurance companies are putting packages together offering insurance for these drivers which should be checked and maintained in order to operate. Ride sharing companies have been in the news a lot for background checks they claim they are safe but have been questioned greatly. Getting a sheriffs card for ride sharing companies could be an option this can guarantee a safe driver is provided. Taxi companies must also comply with the ADA which requires service to handicapped individuals which ride sharing companies do not how is that fair and why should they be excluded from this? Taxis are required by law to serve every neighborhood ride sharing is not. They have the option of declining the ride if it's not in a desirable area taxis are not.

5. Ride sharing companies should only be allowed to residential areas.

There are plenty of business off the strip you have numerous golf courses in town. At night there is plenty of business at local bars, casinos, people going to the strip from there homes. Areas that are underserved it could be an alternative to the RTC. This could alleviate the concern of getting a cab in a timely manner in a residential area while taxi and limousine companies can improve on there service on the strip while it seems I am pro taxi/limousine I have had my fair share of bad experiences with taxi and limousine drivers but there is a lot of good ones who do not long haul and are very customer service oriented. I deal with drivers who pick up drunk people there whole shift and do it in a very professional manner. To the driver who was complaining about 12 hour shifts I work 2 jobs 16 hours a lot of the times this is what we chose to do I love my job I have a stay at home wife with three boys my work ables me to do this ride share companies could hurt my income because it takes me out of the equation I help people discover Las Vegas I am asked where to eat what nightclub to go to and why should I go to this show instead of another we are ambassadors of Las Vegas and nothing makes me feel better when a taxi or limousine drops off a guest and the guests thanks me for the advice. Ride sharing could cut out my service of helping and welcoming guests to the hotel.

Thank you for reaching out and listening I believe I have a different point of view. I see both sides I deal with a lot of taxi and limo drivers it's a great industry and would hate to see it get hurt with the oncoming of technology but it is inevitable but while I think technology is good, ride sharing should not be considered an app but as a taxi or limo company because that's exactly what it is. We should ask who the real monopoly is a worldwide company valued at 40 billion dollars or your local taxi and limo company who obey and pay to run their businesses?

Sincerely,

Lincoln R. Mihaere

Sent from my iPhone

-----Original Message-----

From: Jpvegas333 [mailto:jpvegas333@cox.net]

Sent: Monday, July 20, 2015 7:44 AM

To: JIM DAY

Subject: Regulations suggestion for ride sharing

Hello! I'm a 14 year cab driver . I'd say not allowing ride sharing companies to pick up at airport or strip or downtown casino corridor. This would help with traffic congestion and chaotic situations for our visitors.

Also drug tests and medical evaluations. On a yearly or every 2 years basis.

Otherwise, glad to see that our regulatory bodies are looking out for us by taking the time to do this process thoughtfully.

Take care

Justin Pechonis

Sent from my iPhone

**From:** J Reyna [mailto:reesports@gmail.com]  
**Sent:** Monday, July 20, 2015 4:27 PM  
**To:** JIM DAY  
**Subject:** Airport Ride-hailing regulation suggestion

So, here's my suggestion: 30 passenger shuttle buses will alleviate the much dreaded ride-hailing traffic at the airport.

This system will also allow cab companies to maintain daily operations, thus being able to continue providing for their families.

Shuttle bus drivers require a CDL W/passenger endorsement (for 16 passengers or more)

I believe that ryde - hailing drivers departing the airport with one passenger defeats the practical essence of this ingenious ride-hailing system.

An airport flat fee of \$8 per passenger to the strip, and \$11 per passenger downtown promotes a (ride-hailing system) vision of success for All parties involved.

Ride-hailing shuttle buses MUST be equipped with a ramp/lift for wheel chairs.

Juan Reyna  
702-460-6528

KIMBERLY MAXSON-RUSHTON  
EMAIL: krushton@cooperlevenson.com

Direct Phone (702) 832-1900  
Direct Fax (702) 832-1901

FILE NO.

July 22, 2015

Chairman Andrew MacKay  
2290 South Jones Blvd, Suite 110  
Las Vegas, Nevada 89146

Re: NTA Regulation Workshop - Docket No. 15-06024 - LCB File No. R029-15

Dear Chairman MacKay:

Please find enclosed herein the Livery Operator Association's (LOA) proposed changes to the draft regulations currently before the Nevada Transportation Authority (NTA) for consideration (Docket 15-06024 and LCB File No. R029-15).

For ease of review, the proposed changes, if applicable, identify the specific section of the draft regulations and include a reference to the corresponding provision(s) in Assembly Bill (AB) 176 or the source of the proposed language.

**Definitions:**

*Intervener* – *Intervener is any person who can demonstrate a direct and substantial interest in a proceeding conducted by the Authority pursuant to this regulation. An intervener must file a petition with the Authority requesting an order allowing the intervention.*

The LOA requests that the regulations be expanded to allow "interveners" to participate in matters pertaining to a transportation network company and/or a driver. Examples of individuals who could have a direct and substantial interest may be a lien holder on a vehicle; the victim of a crime/accident involving a TNC; an administrative agency; a competing TNC; or, a commercial business (i.e. gaming property).

*Carpooling* - *Carpooling is defined as services provided to 8 or more passengers with the place of origin being a personal residence or dwelling, not a hotel, motel or timeshare, and the destination a mutual place of business for all passengers. All other regulatory standard applicable to a transportation network company shall apply to Carpooling services.*

- *Sec. 22(2) of AB 176.*

**Section 34 - TNC Application**

*A transportation network company must provide a detailed description of the transportation network services to be provided in Nevada.*

Chairman Andrew MacKay  
July 22, 2015  
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The LOA submits that the inclusion of a description of the proposed services ensures that said services are consistent with AB 176 and do not otherwise require additional or alternative licensure.

*A transportation network company shall file with the Authority all forms of user agreements, use contracts and privacy terms required for use of the application by a passenger. A transportation network company is to file with the Authority all updates of such documents and/or terms reflecting changes to the agreement.*

- See, New York City Taxi and Limousine Commission (Rulemaking 2015)

*A transportation network company shall file a Release and Indemnity of All Claims releasing the State of Nevada from actions associated with the processing of the application and oversight of the TNC operations.*

- See, NGCB Form 17 – Investigation Application

*If a local jurisdiction requires a business license, the transportation network company must provide verification that it has obtained all applicable business licenses prior to the initiation of operations.*

- Sec. 44 of AB 176

#### TNC Driver Requirements

*Driver's may connect to a transportation network company's application and accept passenger information from an electronic device provided the device is mounted in a fixed position and not hand-held and use of the electronic device is limited to either voice or one-touch preprogramed buttons or keys while a vehicle is in motion.*

- See, NRS 484B.165

*A driver while logged on must serve all passengers and may not refuse service, by words, gestures or cancellation without notification to the passenger, in electronic format, of the inability to provide service and the reason for said refusal.*

- Sec. 38 of AB 176.

*A driver shall file a Release and Indemnity of All Claims, releasing the State of Nevada from actions associated with the oversight of TNC drivers.*

- See, NGCB Form 17 – Investigation Application

*A driver is prohibited from using a vehicle operated pursuant to a short term lease agreement with a short term lessor pursuant to NRS 482.307 or a loaner car from an auto dealership.*

*A driver is prohibited from operating a vehicle which is more than sixty (60) months past the first purchase date of the vehicle by the original owner.*

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**Solicitation of passengers (AB176, Sec. 46, AB176, Sec. 38)**

- 1. A transportation network company or his or her officers, employees, agents, representatives or drivers shall not solicit or pick up passengers other than through the use of the digital network or software application service.*
- 2. A transportation network company driver shall not stage or park a vehicle by a designated taxicab stand or a commercial transportation loading area.*
- 3. A driver may only load, unload, or wait for a passenger for whom the driver has accepted a connection arranged through a transportation network company's digital or software application service.*

Consistent with the statutory authority to operate in Nevada, transportation network company's drivers may only perform transportation [network] services pursuant to a digital network or software application system. *See, Sec. 27, AB 176.* Furthermore, a driver may transportation network company and a driver may only accept payment of a fare electronically and a driver shall not solicit or accept cash as payment of a fare. *See, Sec. 30(4), AB 176.*

In order to facilitate safe and reliable transportation [network] services between a permitted driver and a passenger mutual identification of both parties must take place in a safe and expedient manner that does not impede or slow other modes of public or private transportation. Additionally, separate and distinct loading zones will further assist to prevent consumer confusion and further facilitate the legislative intent that transportation [network] services be initiated and paid for pursuant to a digital network or software application system.

**Sec. 47. Maintenance of records** (AB176, Sec. 46)

- 1. An authorized transportation network company shall maintain the records required by the Authority in a designated location within the state.*
- 2. All records required by the Authority to be maintained by an authorized transportation network company must be maintained by the authorized transportation network company for at least 3 years.*
- 3. All records required by the Authority to be maintained by an authorized transportation network company are subject to inspection or audit by the Authority or its designated agent at any time during regular business hours.*
- 4. In the event that a transportation network company seeks to deviate from section 1, the transportation network company shall provide adequate information as to where the records are maintained and, if deemed necessary, the Authority may require the transportation network company to deposit funds to cover the costs of travel necessary to inspect or audit the records.*

**Vehicles**

*A driver shall limit the number of passengers in a vehicle to be consistent with the number of safety belts in the vehicle.*

**Safety of the traveling public**

*Upon receipt of a complaint from a passenger that a driver is impaired a transportation network company shall immediately notify law enforcement and/or the Authority.*

- Section 39 of AB 176.*

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### Uniform Rates

#### **Sec. 56. Emergency Rates**

- 1. Each permitted transportation network company shall notify the Authority of the base rate it intends to charge passengers and the methodology for calculating said rate. Any change to the base rate or the method of calculating said rate must be approved by the Authority prior to the use of the new rate.*
- 2. During an emergency, as defined in NRS 414.0345, a transportation network company shall not charge a rate in excess of the base rate on file with the authority upon the date of the emergency.*

The proposed language removes the ability of a TNC to charge in excess of the base rate during a state emergency as declared by the Governor. The LOA respectfully submits that passengers should not be subject to dynamic pricing (i.e. price surging/gouging) during a state of emergency.

#### **Sec. 57. Uniform Rates**

- 1. A transportation network company or driver shall only accept payment of a fare for transporting passenger electronically.*
- 2. All fares charged by a transportation network company or driver and the method by which the fare is calculated shall be approved by the Authority in order to ensure reliable and cost effective services.*
- 3. A transportation network company or driver may only charge, demand, collect or receive a fare which has been approved and is published by the Authority on its website and on an internet website or within the digital network or software application service of the TNC.*
  - Sections 21 & 30, AB 176*

### Proposed Regulations Pertaining to TNC and Driver Operations

*The Authority may impose reasonable restrictions on TNC's or drivers based on, but not limited to, factors such as safety, the impact on traffic and infrastructure, environmental impact, and any other factor the Authority deems necessary to ensure the safety, reliability and cost-effectiveness of the transportation services provide in this state.*

- Sec. 21 of AB 176.*

### Method of Operation

*It is the policy of the Authority to require that all transportation network companies and drivers operate in a manner suitable to protect the public health and safety and to ensure orderly, reliable and cost-effective transportation services. Responsibility for the employment and maintenance of suitable methods of operation rests with the transportation network company and willful or persistent use or toleration of methods deemed unsuitable will constitute grounds for permit revocation or other disciplinary action.*

- Sec. 21 of AB 176.*

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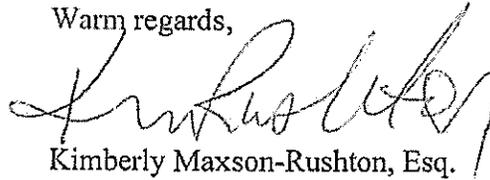
COOPER LEVENSON, P.A.

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In conclusion, on behalf of the LOA, I'd like to thank the Nevada Transportation Authority for the opportunity to provide input on these regulations.

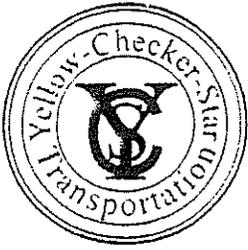
As always, the Livery Operators Association appreciates the Authority's valuable time and consideration.

Warm regards,

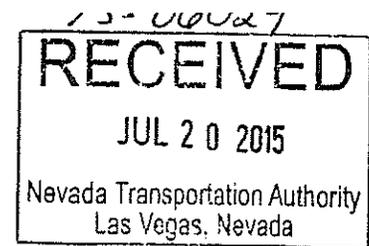
A handwritten signature in black ink, appearing to read 'Kimberly Maxson-Rushton', written in a cursive style.

Kimberly Maxson-Rushton, Esq.

cc: Commissioner George Assad, Esq.  
Commissioner Keith Sakelhide, Esq.  
James Day, Esq.



Nevada Yellow Cab Corporation  
Nevada Checker Cab Corporation  
Nevada Star Cab Corporation



Jim Day, Administrative Attorney  
2290 S. Jones Blvd.  
Suite 110  
Las Vegas, NV 89146

July 20, 2015

Dear Mr. Day,

Statistics published in Brain Injury Society show accidents related to texting is 23% higher than DUI. Texting was found responsible for 1.6 million accidents a year which is 25% of all driving accidents.

Yellow-Checker-Star Transportation would like to request specific language that all TNC's be required to follow Nevada State law which prohibits the use of hand held communication devices or texting while driving.

Mounted or hands free equipment should be required.

Thank You,

Bill Shranko  
Chief Operating Officer  
Yellow-Checker-Star Transportation

5225 West Post Road • Las Vegas, NV 89118  
Phone: 702-873-8012 • Fax: 702-873-4074

**Before the Nevada Transportation Authority**

NTA Docket No. 15-06024 / LCB File No. R029-15

Comments regarding the proposed adoption of regulations to a new chapter of the Nevada Administrative Code for purposes of implementing Assembly Bill No. 175 and Assembly Bill No. 176 of the 78<sup>th</sup> (2015) Nevada Legislative Session.

**Authority:** Assembly Bill No. 176

Sec. 21

It is hereby declared to be the purpose and policy of the Legislature in enacting this chapter to ensure the safety, reliability and cost-effectiveness of the transportation services provided by drivers affiliated with transportation network companies in this State.

Sec. 25(3)

The Authority is authorized and empowered to regulate, pursuant to the provisions of this chapter, all transportation network companies and drivers who operate or wish to operate within this State. The Authority shall not apply any provision of chapter 706 of NRS to a transportation network company or a driver who operates within the provisions of this chapter and the regulations adopted pursuant thereto.

Sec. 46

The Authority shall adopt such regulations as are necessary to carry out the provisions of this chapter.

**Purpose of proposed regulation:**

The following proposed regulation is necessary to help ensure the safety of the riding public by requiring every transportation network company to report, in real-time and through an independent third party provider, basic information relating to fare, insurance, drivers, vehicles and hours of service.

**Proposed regulation:**

NAC XXX.XXXX

1. Every transportation network company or driver shall, during any period in which the driver is providing transportation services to the public, provide to the Authority in real-time, through a direct web service/application programming interface (“API”) administered by an independent third party provider, the following information:

(a) Proof of coverage under a policy of transportation network company insurance [see Sec. 11 of AB 176];

(b) Proof the driver has complied with the requirements of NRS 485.185 [see Sec. 29(2)(a)(5) of AB 176 – (state minimum tort liability insurance)];

(c) The name, age and address of the driver [see Sec. 29(2)(a)(1) of AB 176];

(d) The driver's valid driver's license number issued by the Department of Motor Vehicles, unless the driver is exempt from the requirement to obtain a Nevada driver's license pursuant to NRS 483.240 [see Sec. 29(3)(b) of AB 176];

(e) Proof that the motor vehicle being operated is registered with the Department of Motor Vehicles, unless exempt from the requirement to register the motor vehicle in this State pursuant to NRS 482.385 [see Sec. 29(3)(c) of AB 176];

(f) A record of each time the driver logs into and out of the transportation network company's digital network or software application service [see Sec. 21 of AB 176 and Sec. 1.3 of SB 376]; and

(g) The total fare charged and collected by the transportation network company for each trip completed by a driver operating for a transportation network company, with a unique transaction identifier for each such trip [see Secs. 30, 34, 36 of AB 176]. [;and

(h) Such other information as the Authority may require.]

Respectfully submitted:

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