

Workshop

Docket 21-10016

**Additional material provided
after initial posting of
supporting material but prior
to meeting.**

November 17, 2021

Via Email

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Re: *Docket Number 21-10016*
Rasier, LLC's Comments Regarding Proposed Amendment to NAC 706A.290

Dear Commissioners:

In response to the Nevada Transportation Authority's ("NTA") Notice of its November 18, 2021 Workshop to Solicit Comments on Proposed Regulations, Rasier, LLC ("Rasier" or "Uber")¹ submits the following comments in response to the NTA's proposed amendments to NAC 706A.290, as well as an alternative proposed amendment to the regulation for the NTA's consideration.

Under the existing language of NAC 706A.290, transportation network companies ("TNCs") are prohibited from increasing fares above the "base rates" on file during a state of emergency. During the ongoing COVID-19 pandemic and the resulting state of emergency in Nevada, the language of NAC 706A.290 meant that TNCs were restricted in their ability to implement dynamic pricing that is responsive to real-time rider demand and driver availability. This language inadvertently contributed to significant long-term problems for rideshare availability and reliability in Nevada. Riders, drivers and small businesses in Nevada were severely adversely impacted as the state reopened and the demand for rideshare services coincidentally increased. On May 28, 2021, Governor Sisolak issued an Emergency Regulation allowing TNCs to resume dynamic pricing. In the months since Uber has resumed dynamic pricing, riders in Nevada have seen tremendous improvements in wait time and reliability, while median driver earnings have significantly increased.

Rasier supports the NTA's efforts to amend NAC 706A.290 to allow surge pricing and other price increases during a long-term state of emergency (*i.e.*, an emergency lasting over seven days). Amendments are necessary to ensure that similar issues for riders, drivers, and

¹ Rasier is a fully-owned subsidiary of Uber Technologies, Inc. that is licensed in Nevada as a transportation network company.

businesses in Nevada do not arise again in the event of a potential long-term state of emergency in the future. However, Rasier is concerned that the current proposed amendments go too far in attempting to solve a problem that the solution that is currently in place in the state—utilizing TNCs’ existing pricing processes, dynamic pricing, and incentives algorithms—has already effectively addressed. This is evident by the vast increase in the number of drivers who have returned to utilize Uber’s platform, once surge pricing was reinstated, to help meet the overwhelming demand of riders as part of Nevada’s successful reopening. In light of the effectiveness of the existing solution, and in the absence of complaints regarding the status quo, Raiser recommends the following proposed amendment for the NTA’s consideration, as well as comments and additional recommended changes to the NTA’s proposed amendments.

Rasier’s Proposed Amendment

To better meet the needs of both riders and drivers during an extended state of emergency, Rasier asks that the NTA amend NAC 706A.290 to be consistent with the Emergency Regulation amendment that the NTA proposed in April of this year, which would have added a provision to allow TNCs to institute surge pricing when an emergency, as defined in NRS 414.0345, exceeds 30 consecutive days. In describing its proposed Emergency Regulation for the Governor’s consideration, the NTA noted that the regulation would add “a provision to allow transportation network companies to charge a fare in excess of the base rate on file with the Authority during an emergency defined in NRS 414.0345 lasting more than 30 consecutive days.” We believe that such an amendment would be consistent with the language and intent of the original regulation and NRS 706A.170(6) and would also allow TNCs to continue to respond appropriately by capping increased fares during an emergency, while also providing flexibility to ensure driver earnings and rider reliability in the face of demand when a state of emergency lasts for an extended period. To that end, Rasier proposes the following alternative language for the NTA’s consideration:

NAC 706A.290 is hereby amended as follows:

NAC 706A.290 Notification of base rates; prohibition against excessive fares during emergencies. (NRS 706A.100, 706A.110, 706A.170)

1. Each transportation network company shall notify the Authority of the base rates currently in use by the company, and file with the Authority any new base rates prior to their utilization.
2. During an emergency, as defined in NRS 414.0345, a transportation network company shall not charge a fare in excess of the base rate on file with the Authority on the date of the emergency.

3. The restriction in section 2 will remain in effect until the state of emergency has been terminated or until 30 days have passed from the first declaration of emergency, whichever occurs first.

[Rasier's proposed additions in blue, bold italics]

Comments on the NTA's Proposed Amendment

Additionally, Rasier offers the following comments on the NTA's proposed amendment. First, Rasier recommends that Section 4 be deleted from the proposed amendment in its entirety. Not only does that provision go beyond establishing a maximum fare and dictate the terms of TNCs' pay to drivers for completing individual trips arranged on the company's platform in a manner that may conflict with TNCs' well-established dynamic pricing and incentives processes, its apparent goal is already accomplished by these existing processes utilized by TNCs that have been in effect since the end of May, when the prohibition in NAC 706A.290 was lifted. ***These existing pricing processes allow Rasier to address rider demand and driver availability imbalances in real time, and inherently increase driver earnings during periods when demand is highest.*** This allows Rasier to activate driver-side surge incentives to quickly and flexibly address driver earning concerns and to more effectively incentivize drivers to meet increased demand for rides at a given time in a specific location. In addition, as demonstrated by the experience for Nevada consumers and businesses during the last few months, TNCs' existing dynamic pricing processes can help alleviate ride availability and reliability issues during busy times in busy areas and restore balance to the marketplace. On the other hand, the NTA's latest proposed amendments would represent a step backward, in that they would restrict the effectiveness of Rasier's pricing model that has helped to bring drivers back to the Uber platform in Nevada and has helped the state as it continues its recovery. ***In short, allowing TNCs to resume dynamic pricing during an extended state of emergency has worked as intended, and as Rasier has not been made aware of any complaints from drivers about surge pricing over the past few months, there is simply no need to upset the status quo.*** As such, Rasier respectfully requests that Section 4 be removed.

Second, Rasier recommends that the NTA's proposed cap on fare increases in subsection 3 be removed and be replaced with the language Rasier proposed above: ***3. The restriction in section 2 will remain in effect until the state of emergency has been terminated or until 30 days have passed from the first declaration of emergency, whichever occurs first.*** By limiting the amount of any fare increase following the first seven days of a state of emergency to 1.5 times base rates, subsection 3 as proposed will significantly limit the effectiveness of Rasier's dynamic pricing algorithms in encouraging drivers to meet real time demand, and will not make a meaningful difference toward resolving the reliability and availability issues that were ever-present in Nevada during the extended state of emergency before the Governor's

Emergency Regulation went into effect. In other words, the proposed cap would severely disrupt the fine-tuned tool our business uses to make sure that rider demand is met, and that drivers are compensated for meeting that demand at the right time. If the NTA insists on including such a cap on fare increases, Rasier recommends that the cap be increased from 1.5 times to 3 times the base rates on file. Raising the cap to 3 times the base rates on file would help to mitigate the disruption that a cap of 1.5 would impose, even if the NTA declines to remove subsection 4 in its entirety.

Finally, to the extent that the NTA insists on capping fare increases, as reflected in the NTA's proposed subsection 3, Rasier proposes that any multiplier cap should be time limited, so that it will remain in effect for a maximum of 30 days from the date that the emergency is declared or until the date that the emergency is terminated, whichever occurs first. This limitation would be consistent with the NTA's Emergency Regulation proposal in April of this year, which allowed TNCs to re-institute surge pricing when an emergency exceeds 30 consecutive days. Currently, the NTA's proposed amendment does not place any time limit on that restriction on fare increases other than the termination of the state of emergency. Setting an outer bound of 30 days will be necessary to prevent any unintended long-term harm to Nevada drivers, riders, and businesses in the event that any future state of emergency lasts for an extended period of time. Relatedly, as the current COVID-19 State of Emergency has now lasted for well over a year and a half, a 30-day outer limit for the application of the restriction in subsection 3 would clarify that that restriction will apply only to any future states of emergency, and not to the current ongoing COVID-19 state of emergency. In light of these recommendations, an alternative to the NTA's proposed language could read as follows:

3. The prohibitions outlined in section 2 are only in effect for the first seven calendar days after the declaration of emergency as defined in NRS 414.0345. After the seventh day, the change in the base rate is limited to ~~1.5~~ 3 times that rate until the declaration of emergency has been terminated or until 30 days have passed from the first ~~for the duration of the~~ declaration of emergency as defined in NRS 414.0345, whichever occurs first.

[Rasier's proposed additions in blue, bold italics and proposed deletions in red strikethrough]

Similarly, to the extent that the NTA declines to delete subsection 4 from its proposed amendment, Rasier recommends adding a similar time limitation that would apply to that provision, by amending the last sentence of subsection 4 as follows:

This section will remain in effect until the state of emergency ~~is~~ has been terminated or until 30 days have passed from the first declaration of emergency, whichever occurs first.

[Rasier's proposed additions in blue, bold italics and proposed deletions in red strikethrough]

Rasier appreciates the NTA's consideration of its proposed amendment and comments on the NTA's proposed amendment and thanks the NTA for its continued leadership in addressing this issue.

Respectfully submitted,

/s/ Alexander J. Larro

Regulatory Counsel

/s/ Christopher Miller

Sr. Manager, Public Policy



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November 16, 2021

**RE: Docket Number 21-10016
Lyft, Inc. Comments on Proposed Amendments to NAC 706A Regarding TNC Fares
During an Emergency**

Dear NTA Commissioners,

Lyft, Inc. (“Lyft”) appreciates the opportunity to comment on the Nevada Transportation Authority’s (“NTA”) proposed amendments to Nevada Administrative Code (“NAC”) Chapter 706A related to fares charged by Transportation Network Companies (“TNCs”) during a declaration of emergency by the Governor of Nevada. We thank the NTA for considering our suggestions, which are explained in greater detail below.

Lyft commends the NTA’s willingness to develop regulatory solutions that have helped alleviate many of the driver supply issues that TNCs have faced over the past year. Prior to the emergency regulation signed by Governor Sisolak on May 28, 2021 (the “Emergency Regulation”), Lyft struggled to meet the needs of passengers due, in part, to pricing constraints placed on TNCs during the ongoing COVID-19 state of emergency. Economic recovery in recent months has driven increased demand for transportation network services in the state, and the NTA’s implementation of the Emergency Regulation allowed TNCs to adjust ride fares to meet current market conditions, resulting in increased driver supply to rider demand.

Without a permanent change to NAC 706A, TNCs would be restricted in their ability to adjust ride fares to balance demand and supply due NAC 706A.290.2’s prohibition on charging fares in excess of the TNC’s base rate during an emergency. As such, Lyft agrees with the NTA’s approach to finding a long-term regulatory solution to address the issue of fares during extended states of emergency.



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Lyft believes that the current draft of the proposed amendments is a positive start toward resolving the pricing issues that the ridesharing industry has faced during the COVID-19 pandemic.

Lyft respectfully requests that the NTA adopt the below language, which mirrors the Emergency Regulation [New language in bold italics]:

1) Revise NAC 706A.290 to state:

1. Each transportation network company shall notify the Authority of the base rates currently in use by the company, and file with the Authority any new base rates prior to their utilization.
2. ***Subject to subsection 3***, during an emergency, as defined in NRS 414.0345, a transportation network company shall not charge a fare in excess of the base rate on file with the Authority on the date of the emergency.
3. ***Notwithstanding subsection 2, if an emergency, as defined in NRS 414.0345, remains in effect for longer than 30 days the prohibition in subsection 2 shall not apply beginning on the 31st day following the declaration of emergency.***

The Emergency Regulation superseded NAC 706A.290.2 and allowed TNCs to institute dynamic pricing in the event that an emergency exceeded 30 consecutive days. The permanent regulation should be modeled on the Emergency Regulation, which proved to be an effective solution to the pricing issues faced by TNCs in 2021. The proposed amendment should therefore be revised to include a prohibition on charging fares in excess of the base rate during the first 30 days of an emergency only, with no further pricing or business restrictions on TNCs following the 31st day of the emergency.

Lyft's proposal better aligns with the intended goal of NAC 706A,290.2, as stated in the Informational Statement attached to the Emergency Regulation dated April 2, 2021:

“The intended goal of current regulation [NAC 706A.290.2] was to prevent price variability during emergencies of short duration. However, a long-term state of emergency and the prohibition on surge pricing was not a foreseen circumstance and has created significant unreliability for ridesharing...”

By including a requirement that TNCs not charge a fare in excess of the base rate during the first 30 days of an emergency, this proposal maintains the protection for consumers intended by NAC



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706A.290.2, while preventing a situation where an extended state of emergency creates unreliability for TNC passengers and decreased earning opportunities for TNC drivers by freezing TNC prices for an unforeseen period of time, as was the case during the COVID-19 pandemic.

The adoption of the Emergency Regulation in May allowed TNCs to resume normal business operations by reintroducing dynamic pricing. As a result, Lyft was able to provide additional earnings incentives to drivers and improved levels of service. As Nevada's economic recovery continues, and conventions, festivals and international tourism all return to the state, it is important that TNCs be able to meet the increased demand to help riders reliably get where they need to go. Therefore, the NTA should maintain the pricing flexibility adopted in the Emergency Regulation, rather than adopt a regulation that reinstates dynamic pricing restrictions over the course of an extended state of emergency.

If the NTA declines to adopt a permanent regulation modeled after the Emergency Regulation (as requested above), we respectfully suggest the below revisions to subsections 3 and 4 of the NTA's proposed amendment to clarify any new requirements introduced by the proposed amendments, and to better enable TNCs to meet the needs of passengers and drivers [New language in bold italics]:

1) Revise NAC 706A.290 to state:

1. Each transportation network company shall notify the Authority of the base rates currently in use by the company, and file with the Authority any new base rates prior to their utilization.
2. During an emergency, as defined in NRS 414.0345, a transportation network company shall not charge a fare in excess of the base rate on file with the Authority on the date of the emergency.
3. ***The prohibitions outlined in subsection 2 are only apply during in-effect for the first seven calendar days after the declaration of emergency as defined in NRS 414.0345. After the seventh day following the declaration of emergency, a transportation network company may charge an increased fare during the emergency up to 3 times the base rate. ,the change in the base rate is limited to 1.5 times that rate for the duration of the declaration of emergency as defined in NRS 414.0345.***
4. ***If an increased fare is charged following the first seven calendar days after the declaration of the emergency during an emergency, as defined in NRS 414.0345, all additional revenue generated by such increased fare, in excess of***



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the base rate, must be used to fund incentives or other payments to drivers who provide transportation services arranged through the transportation network company's digital network or software application. This subsection will apply for the duration of the emergency remain in effect until the state of emergency is terminated.

Subsection 3 should be amended to permit TNCs to charge an increased fare up to 3 times the base rate, rather than 1.5 times the base rate. The currently proposed amount of 1.5 times the base rate does not provide TNCs with sufficient flexibility to adjust fares in response to driver supply and passenger demand during the course of a sustained state of emergency, such as that declared in response to the COVID-19 pandemic. A regulation that places a low cap on TNC dynamic fares would leave TNCs passengers and drivers in the same position that they were in during the pandemic; with TNCs unable to leverage economic incentives to get drivers on the road in order to meet passenger demand. A multiplier of up to 3 times the base rate would allow TNCs to better adjust fares to market conditions.

Lyft thanks the NTA for consideration of these comments and looks forward to continuing to work together in this rulemaking process. Please contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Gallagher".

Elizabeth Gallagher
Senior Regulatory Compliance Manager