

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Rules And Regulations Governing The :
Transportation Of Passengers Via : Docket No. D-17-27
Transportation Network Companies :

REPORT AND ORDER

1. Introduction

On June 26, 2017, the Rhode Island Division of Public Utilities and Carriers' ("Division") published a "Public Notice Of Proposed Rulemaking" wherein interested persons were invited to offer written comments and/or attend a public hearing in response to the Division's proposed adoption of *Rules and Regulations Governing the Transportation of Passengers via Transportation Network Companies* ("TNC Rules"). The Division's Motor Carrier Section ("Motor Carrier Section") is sponsoring the adoption of the proposed TNC Rules. The Division thereafter conducted a public hearing to take public comment on the proposed TNC Rules on July 19, 2017. The record for accepting public comments closed on July 28, 2017. The notice and public comment procedures followed by the Division were compliant with the statutory requirements contained in R.I.G.L. §§42-35-2.7 and 42-35-2.8.

As background, in advance of publishing the June 26, 2017 "Public Notice Of Proposed Rulemaking," the Motor Carrier Section mailed copies of "draft" TNC Rules to all public motor vehicle ("PMV") and taxicab certificate holders doing business in Rhode Island. This mailing took place on April 10, 2017. The Motor

Carrier Section invited these certificate holders to comment on the draft TNC Rules by April 28, 2017. Similarly, also on April 10, 2017, the Motor Carrier Section e-mailed notice of the proposed draft TNC Rules to Uber and Lyft for the purpose of soliciting their comments on the draft TNC Rules. Uber and Lyft were also given until April 28, 2017 to offer comments. Some of the comments received by these certificate holders and TNC companies were adopted by the Motor Carrier Section and incorporated into the instant proposed TNC Rules. This advance notice of proposed rulemaking conformed to the procedural requirements of R.I.G.L. §42-35-2.5.

Additionally, in keeping with the requirements of Executive Order 15-07, the Motor Carrier Section provided notification of the instant rulemaking to the State's Office of Regulatory Reform ("ORR"), which is in the Office of Management and Budget (OMB), which is itself in the Department of Administration (DOA). After determining that the Motor Carrier Section's proposed TNC Rules were compliant with the regulatory and economic eligibility requirements contained in Executive Order 15-07, ORR approved the proposed TNC Rules on April 6, 2017.

Upon receipt of the proposed TNC Rules from the Motor Carrier Section, the Administrator of the Division appointed the undersigned hearing officer to conduct a rulemaking proceeding in accordance with the requirements and procedures delineated in R.I.G.L. §§42-35-2.7 and 42-35-2.8 and Rule 12(f)(1) of the Division's *Rules of Practice and Procedure*. The Division thereupon established the instant docket and scheduled and conducted a duly noticed public hearing on the Motor Carrier Section's proposed TNC Rules.

The Division conducted a public hearing on the proposed TNC Rules on July 19, 2017. The hearing was conducted in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick, Rhode Island. Christy L. Hetherington, Esq., Special Assistant Attorney General, entered an appearance for the Motor Carrier Section. Also at that time, Mr. Terrence Mercer, the Division's Associate Administrator for Motor Carriers, proffered direct testimony which identified and explained the rationale for the proposed TNC Rules. The proposed TNC Rules were officially entered as an exhibit in this docket.¹

2. Summary of Rulemaking Authority

The Division notes that its authority to promulgate rules and regulations for TNC operations in Rhode Island is derived from the following statutory law:

- R.I.G.L. § 39-14.2-3, which in pertinent part provides:

Every person operating a licensed transportation network company or operating as a licensed transportation network company operator is declared to be subject to the jurisdiction of the division of public utilities and carriers. The division may prescribe rules and regulations consistent with this chapter that are necessary to assure adequate, safe, and compliant service under this chapter. The division is further authorized to conduct investigations into complaints; conduct investigations initiated on its own; and to hold hearings as it deems necessary to fulfill the proper administration of this chapter.

- R.I.G.L. § 39-14.2-1(8), which in pertinent part provides:

“Transportation network company” or “TNC” means an entity licensed by the division pursuant to this chapter that uses a digital network to connect

¹ The proposed TNC Rules are marked as Exhibit 1.

transportation network company riders to transportation network operators who provide prearranged rides....

- R.I.G.L. § 39-14.2-1(10), which in pertinent part provides:

Transportation network operator” or “TNC operator” or “TNC driver” means an individual who:

(i) Receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(ii) Uses a personal vehicle to offer or provide a prearranged ride to TNC riders upon connection through a digital network controlled by a transportation network company in exchange for compensation or payment of a fee.

3. Rationale for the Proposed TNC Rules

At the outset of the July 19, 2017 hearing, Mr. Mercer related that many of the provisions contained in the proposed TNC Rules essentially restate the statutory requirements contained in R.I.G.L. Chapter 14.2, which Mr. Mercer related was enacted in 2016. He testified that Chapter 14.2 sets the regulatory framework for a new for-hire service, termed “transportation network company” service. Mr. Mercer explained that the new law requires the Division to establish a comprehensive set of rules and regulations that governs this new industry in Rhode Island.²

Mr. Mercer also explained that before a final set of proposed rules and regulations was decided on, he circulated a “draft” set of TNC Rules and sought input from stakeholders in the PMV and taxicab industries as well as from the

² Tr. 4-5.

two largest currently established TNC service providers, Uber and Lyft. Mr. Mercer related that many of the comments received were later incorporated into the now proposed TNC Rules.³

Next, after identifying and correcting a typo in the proposed TNC Rules (contained in Rule 5.10(a)(3))⁴, Mr. Mercer stated that the proposed TNC Rules should also include a reference to Chapter 14.2's mandate that "TNCs... establish and implement a written policy capping dynamic pricing during disasters and relevant states of emergency, and make its policy available on its website, and in its web application." He proffered the following proposed language, to be inserted into the TNC Rules as Rule 5.6(E):

All TNC's shall establish and implement a written policy capping dynamic pricing during disasters and relevant states of emergency and make this policy available on its website and in its web-application. The policy shall also be filed with the Division at the time the TNC applies for its initial TNC Permit, and re-filed with the Division upon any change/amendment to the policy.⁵

Mr. Mercer additionally sponsored a *U.S.A. Today* article that highlights safety concerns associated with TNC drivers who provide many successive hours of TNC services without adequate rest. He related that this unsafe behavior is a serious concern to the Motor Carrier Section and that the proposed TNC Rules include a provision designed to address this issue.⁶

³ Tr. 6-7.

⁴ Tr. 7

⁵ Tr. 8—9 and Division Exhibit 2.

⁶ Tr. 44-48 and Division Exhibit 3.

4. Public Comments, Views and Arguments

a. Verbal comments, views and arguments

During the hearing, the Division received verbal public comments from eight individuals. These individuals represented companies who currently provide taxicab, PMV or TNC transportation services. Their comments are summarized below.

Mr. John Signore, Jr., who identified himself as being “a taxicab owner for 39 years,” expressed concern that TNCs are under-regulated as compared to taxicab companies. He cited the respective differences in vehicle, rate and insurance requirements as being the principal competitive disadvantages for taxicabs. He related that since the TNCs arrived in Rhode Island, many taxicab companies have gone out of business.⁷ Mr. Signore insisted that the State do a better job of providing a “fair playing field” for taxicab companies.⁸

Ms. Temilola Sobowale offered comments on behalf of Lyft. Ms. Sobowale was identified as Lyft’s Regulatory Compliance Manager. Ms. Sobowale also noted that Lyft would be submitting written comments as well. Ms. Sobowale testified that Lyft has several concerns with the Division’s proposed TNC Rules. Specifically, Ms. Sobowale related that Lyft disapproves of proposed TNC Rule 5.3(K), which “would allow the [Division] to impose an immediate suspension on drivers deemed to have a criminal conviction or adjudicated traffic violation that would constitute a danger to the public.” She explained that the Division’s “expanded criteria,” arguably beyond the vetting criteria contained in the statute,

⁷ Tr.10-12.

⁸ Tr. 12-13 and 39-42.

would “limit economic opportunity for drivers who pass an extensive background check” and deny drivers a “reasonable notice or opportunity to be heard.” Ms. Sobowale urged the Division to “strike the proposed discretionary requirement.”⁹

Ms. Sobowale next voiced concern over the “proposed daily driver’s list,” which she contended “poses a serious threat to data security, personal privacy, and industry competition.” She also protested this provision on the grounds that it is “onerous” and “prohibitively expensive.” Ms. Sobowale further maintained that if the goal is to ensure proper adherence to the statutory vetting criteria, proposed Rule 5.4(D) already provides this protection, which she opined negates the need for a daily drivers list. Ms. Sobowale consequently urged the Division to strike the proposed requirement for a daily drivers list.¹⁰ Also, in response to a question from Attorney Hetherington, Ms. Sobowale indicated that Lyft performs background checks on its drivers on an annual basis.¹¹

Mr. Thomas Maguire, Uber’s New England General Manager, also provided verbal comments during the hearing. Mr. Maguire began his comments by stating that Uber has concerns with the proposed rule that would require a TNC driver to obtain written authorization from the vehicle owner before that vehicle may be used to provide TNC services (Rule 5.4(A)(1)). He contended that this requirement exceeds the requirements contained in the statute and should be dropped from the proposed TNC Rules.¹² To buttress this position, Mr. McGuire related that this additional requirement was “considered and rejected by those

⁹ Tr. 15-16.

¹⁰ Tr. 16-18.

¹¹ Tr. 19.

¹² Tr. 21-22.

organizations representing approximately 95 percent of the personal lines insurance... and that it was further rejected by the National Conference of Insurance Legislatures when they wrote the model law, which has been passed by over 40 states in the country.”¹³ Mr. McGuire also argued that imposing a requirement that is not contained in the statute will be “confusing, and could be subject to misinterpretation.” Consequently, Mr. McGuire urged the Division to strike this provision.¹⁴

Mr. McGuire also voiced opposition to Rules 5.3(E) and 5.5(M), which prohibits a TNC driver from being connected to a TNC network(s) for more than 12 hours in a 24-hour period unless the driving time is broken by a period of eight full hours of rest. He argued that this requirement “is inconsistent with the legislative intent, overly burdensome, and unworkable.” Mr. McGuire added that “requiring drivers to report time spent driving on one TNC to another TNC would unnecessarily intrude [into] each driver’s private life, while providing little safeguards against the risk of drowsiness.”¹⁵ Mr. McGuire urged the Division to reconsider this rule.¹⁶

Next, Mr. McGuire addressed a number of proposed rules that Uber contends “would significantly impact driver privacy without a positive impact on safety.” These rules included the requirement that TNCs provide a daily drivers list (Rule 5.4(C)); and the requirements that TNCs keep a record of all complaints made against drivers, and the dates and times drivers log in and out of the TNC’s

¹³ Tr. 22.

¹⁴ Id.

¹⁵ Tr. 22-23.

¹⁶ Tr. 23.

digital network along with the details of each TNC service provided by the driver (Rule 5.5(K)). Mr. McGuire asserted that these requirements “are overbroad and burdensome [and] without a safety upside... and would significantly intrude into the privacy of drivers.”¹⁷

Mr. Mark Male, Executive Vice President of the Independent Insurance Agents of Rhode Island (“Independent Insurance Agents”), also proffered verbal comments during the hearing. Mr. Male related that the Independent Insurance Agents have two concerns with TNC operations in Rhode Island. Specifically, the group feels that “for the financial safety of the public, it is important that the DPUC require the insurance maintained by TNCs be public information.” Mr. Male stated that TNCs presently use “surplus lines” of insurance to insure their vehicles. He explained that these surplus lines, which come from “non-admitted insurance markets” are not regulated by the State so “we have no assurances relative to the scope of coverage limits....” Because of this, Mr. Male urged the Division to require “TNCs... to maintain a certificate of insurance with the DPUC, just as the taxis do, and that information should be public....” Mr. Male reasoned that this would allow a member of the public who “sustains damage, or is injured in an accident in a TNC vehicle... to determine who the insurance carrier is.”¹⁸

Mr. Male testified that the Independent Insurance Agents are also concerned that the TNC legislation “does not address the vehicle owner.” He related: “[w]e have had circumstances where individuals have children... in college” who are using the family car to provide TNC services without the vehicle

¹⁷ Tr. 24-25.

¹⁸ Tr. 26-27.

owner's knowledge. He asserted that the TNCs "should be required to insure both the owner of the vehicle, as well as the driver."¹⁹

Mr. Michael Tartaglione, who described himself as a lifelong taxicab and PMV driver and owner, spoke in support of the Division's proposed TNC Rules. He explained that with the advent of TNC services in Rhode Island and the resulting decline taxicab and PMV companies, it is appropriate for the Division to compel regulatory requirements on the TNCs as well.

However, Mr. Tartaglione opined that the Division's proposed TNC Rules "fall a little bit short." Mr. Tartaglione argues that TNCs like Lyft and Uber, heretofore unregulated, "are motivated by greed and dollars," whereas, taxicab and PMV regulation has focused on "safety and the welfare of the public." As examples, Mr. Tartaglione pointed to the disparate vehicle and insurance requirements, suggesting that TNC vehicles have less stringent eligibility standards and that TNC operators do not have to pay for expensive insurance premiums like taxicab and PMV companies. Mr. Tartaglione asserted that the Division must do better to level the playing field. He contended that unless TNCs are regulated more like taxicabs and PMVs, taxicab and PMV companies will not survive; he also warned that when these services are gone, TNC "prices will go through the roof."²⁰

Mr. Abdul Rahaman, a current PMV certificate holder, also proffered comments. Mr. Rahaman testified that he provides "nonemergency transport" services for the state of Rhode Island (Executive Office of Health and Human

¹⁹ Tr. 27-28.

²⁰ Tr. 28-31.

Services), which he explained is organized through a “broker” (LogistiCare). He expressed concern that this broker will eventually replace his company’s transportation services with services from Uber and Lyft. He based this concern on the disparate overhead operating costs between PMV and TNC companies. Mr. Rahaman related that he pays several hundred dollars each month for the required \$1.5 million in liability coverage and is also obligated to carry Workers’ Compensation insurance for his workers.²¹

Mr. James Oisamaiye, who identified himself as a taxi driver, also expressed concerns with the disparate regulatory treatment between taxicabs and TNCs. He compared his company’s insurance and vehicle eligibility requirements to those imposed on TNCs and TNC drivers. He also questioned the reasonableness of the TNC driver vetting process as compared to the vetting process that applies for taxicab drivers. Mr. Oisamaiye asserted that the Division must be able to go into the databases of these TNCs in order to confirm that the vehicles being used by TNC drivers meet the minimum insurance and vehicle eligibility criteria and that the TNC drivers have complied with the mandatory vetting standards. Mr. Oisamaiye also urged the Division to ignore Uber’s and Lyft’s requests for minimal regulatory oversight.²²

Mr. Kay Adesina, a PMV certificate holder, echoed the comments of Mr. Rahaman, *supra*. In short, Mr. Adesina claims that the state of Rhode Island (through LogistiCare) has already started to use Lyft to provide transportation services (to Medicaid beneficiaries) that were originally being performed by PMV

²¹ Tr. 32-34.

²² Tr. 34-37.

companies. Mr. Adesina contends that it is not fair for the State to require TNCs to operate under a less costly regulatory burden at the expense of PMV companies.²³

b. Written comments, view and arguments

The Division received timely written comments in this docket from four groups. These written comments are summarized below.

The Independent Insurance Agents supplemented their verbal comments with a written submission on July 28, 2017. Their written comments generally paralleled the verbal comments made during the hearing. This group asserts that in the interest of the public's financial safety, TNCs ought to be compelled to provide the Division with a "Certificate of Insurance" copy so that the public will be able to quickly access the information.²⁴

The Independent Insurance Agents also reiterated that TNCs must be compelled to insure the vehicle's owner as well as the TNC driver; and provide the vehicle owner with notice of the insurance implications associated with the use of their vehicle for TNC services. The Independent Insurance Agents support the proposed TNC Rule (Rule 5.7(A)) that would require notice to the vehicle's owner.²⁵

Additionally, the Independent Insurance Agents contend that TNC drivers with multi-accident records should not be permitted to drive for TNCs. The group

²³ Tr. 37-39.

²⁴ See July 28, 2017 letter from Messrs. Ernest Shaghalian and Mark Male.

²⁵ Id.

also believes that TNC drivers “should be required to have a certain minimal amount of driving experience.”²⁶

The Division also received timely written comments from Mr. John Finneran, Director of Legal Affairs, Sentinel Limousine, Inc. Mr. Finneran objects to the disparate vehicle age and mileage limit requirements between vehicles used by TNCs and vehicles used by taxicabs, PMVs and LPMVs. He asserts that because the standards for TNC vehicles are less stringent, these vehicles must also be considered to be less safe. Further, Mr. Finneran argues that this difference in standards “creates an anti-free-market economic model which financially benefits TNCs at the expense of taxicabs, PMVs and LPMVs. Mr. Finneran maintains that this disparate regulatory treatment “will ultimately destroy the profitability of the [taxicabs, PMVs and LPMVs] which we are already beginning to see come to fruition in the Taxi industry.”²⁷

Mr. Finneran also argued that Rule 5.3(H), which states that a TNC driver “may allow or prohibit passengers from smoking in their vehicle,” is “unlawful.” Mr. Finneran cites to Rhode Island Department of Health “Rules and Regulations Pertaining to Smoke-Free Public Places and Workplaces” as the basis for his argument (a copy of said Rules and Regulations were attached to Mr. Finneran’s comments).²⁸

Finally, Mr. Finneran offered comment on proposed TNC Rule 5.5(B)(2), which requires a TNC applicant to demonstrate, subject to Division approval, that it has established vehicle sanitary and acceptability standards for its TNC drivers

²⁶ Id.

²⁷ See July 28, 2017 letter from Mr. John F. Finneran.

²⁸ Id.

that comply with the vehicle age and safety requirements contained in R.I.G.L. Chapter 39-14.2, and which also ensures that TNC riders will be transported in clean vehicles. Specifically, Mr. Finneran urges the Division to use its authority under this provision to ensure that TNC vehicles meet the same physical condition standards that are presently applied to taxicabs, PMVs and LPMVs. By employing the same standards, Mr. Finneran contends that “the Division could... mitigate the enormous gap between the... different safety standards” applicable to TNC vehicles and those vehicles used to provide taxicab, PMV and LPMV services.²⁹

Ms. Temilola Sobowale, on behalf of Lyft, supplemented her verbal comments with a written submission on July 28, 2017. Lyft’s additional comments are summarized below:

Lyft suggests changes to proposed TNC Rule 5.3(B)(3). Specifically, Lyft seeks to strike the requirement that a Personal Vehicle be inspected by a facility “licensed by the state to conduct such inspections.” Ms. Sobowale explained that while this rule is taken directly from the statute, “it would seemingly prohibit Personal Vehicles from states where inspections are not required.³⁰

Lyft also suggests an amendment to Rule 5.3(E). The proposed amendment would “limit only the amount of time a TNC driver may provide prearranged rides, as opposed to limiting the amount of time that a TNC driver may access a TNC network. In support of this suggested change, Lyft contends that a driver can be

²⁹ Id.

³⁰ See July 28, 2017 letter from Ms. Temilola Sobowale, p. 2.

resting while he or she is accessing the network.³¹ Connected to this issue, Lyft also suggests striking Rule 5.5(M), “to remove redundant language.”³²

Lyft also suggests an amendment to Rule 5.3(I). The proposed amendment would “clarify that any and all TNC insurance requirements apply only when a TNC Driver is engaged in TNC services.”³³

Lyft also suggests an amendment to Rule 5.3(J). The proposed amendment would remove language that would prohibit a TNC driver from operating his/her vehicle “when it is so loaded or when there is in the front seat such number of persons as to obstruct the view of the driver to the front or sides, or to interfere with his/her control over the vehicle.” Lyft contends that the only limitation should be linked to the manufacturer’s designated capacity of the vehicle.³⁴

Lyft also suggests an amendment to Rule 5.3(K). Lyft maintains that Rule 5.3(K) “not only expands the disqualification criteria for TNC Drivers, but allows the... [Division] to immediately suspend TNC Drivers.” The proposed amendment would remove the reporting requirement for an “adjudicated traffic violation” and limit the reporting requirement to only convictions, pleas or violations of the offenses delineated in R.I.G.L. §39-14.2-7 (c)(1) and (2). The proposed amendment would also prohibit the Division from immediately suspending TNC drivers in advance of a hearing.³⁵

Lyft also suggests amendments to Rules 5.4(A)(1), 5.4(B)(5) and 5.5(B)(4). The proposed amendments would essentially shift the insurance notification

³¹ Id., p. 3.

³² Id., p. 9.

³³ Id., p. 4.

³⁴ Id., p. 4.

³⁵ Id., p. 5.

requirements from the TNC to the TNC driver. Lyft proposes that its prospective TNC driver inform the vehicle owner/insured that “depending on its terms, the TNC’s financial responsibility coverage may not provide insurance protections when the vehicle is connected to the TNC’s digital network or being used to provide TNC services....”³⁶

Lyft also suggests striking Rule 5.4(C). Lyft contends that the requirement for a daily “drivers list” “is both redundant and prohibitively onerous.” Lyft maintains that because Rule 5.4(D) already requires TNCs to certify annually that all TNC drivers continue to satisfy the background check requirements, there should be no need for a daily drivers list. Lyft also questions the relevance of this information with respect to ensuring background check compliance.³⁷

Lyft also requests that the Division provide clarification on Rule 5.5(H)(1). Lyft wants the Division to define what it means by the word “complaint.” Lyft explains that the Division must provide “clarity as to what type of feedback [from a TNC rider] rises to the level of a ‘complaint.’” Lyft also argues that “legal restrictions” connected to privacy “may limit the extent to which Lyft can provide a report on the investigatory findings of a complaint.”³⁸

Lyft also suggests an amendment to Rule 5.6(D), “to accord with the requirements outlined in the Act.”³⁹ Lyft disagrees that its riders would benefit from a warning “that insurance protections do not exist for rides that are not offered through a TNC’s digital network.” Lyft contends that there “does not

³⁶ Id., pp. 6-7.

³⁷ Id., pp. 7-8.

³⁸ Id., pp. 8-9.

³⁹ Id., p. 9.

appear to be real utility in providing this information on a receipt...” Based on its position, Lyft proposes that this provision be removed from the TNC Rules.⁴⁰

Lyft also suggests an amendment to Rule 5.7(B)(1) “to strike coverage requirements that would extend insurance responsibilities for TNCs.” Lyft contends that although this additional coverage is optional, it believes that the Division should not be looking to expand the insurance requirements for TNCs beyond what is required under the statute.⁴¹

Lyft also suggests an amendment to Rule 5.8(A) to “limit the number of records the... [DPUC] may inspect to 25.” Lyft asserts that “these annual audits, in addition to the... [DPUC’s] ability to inspect records held by TNCs that are necessary to investigate and resolve complaints, provides for abundant oversight.”⁴²

Lyft also suggests amendments to Rule 5.9 that would require the Division to conduct a hearing before imposing an immediate suspension, even if the Division finds the immediate suspension, followed by a hearing, to be ‘in the public interest.’ Lyft argues that such rule “is contrary to fundamental principles of due process.”⁴³

Lastly, Lyft suggests an amendment to Rule 5.11(A)(1) to “include language that will ensure that parties receive appropriate notice of a hearing.” Lyft urges

⁴⁰ Id., pp. 9-10.

⁴¹ Id., p. 10.

⁴² Id., p. 11.

⁴³ Id., pp. 12-13.

the Division to strike language that would permit the hearing officer to conduct a hearing with fewer than the prescribed ten-day notice.⁴⁴

Raiser, LLC, an affiliate of Uber Technologies (“Uber”) also submitted written comments on July 28, 2017. Many of Uber’s comments echoed comments from Lyft.

Like Lyft, Uber objects to the notice provision contained in Rule 5.4(A)(1) and the collision insurance provision contained in Rule 5.7(B)(1). Uber maintains that requiring special notice to, and optional collision insurance for, the vehicle owner/insured in cases where the owner/insured is not the actual TNC driver “exceeds the scope of required coverage set forth in the statute.” Uber further asserts that requesting “written authorization” from the vehicle owner/insured “is also wholly unnecessary.” Uber explains that because it requires its drivers to be the vehicle owner or, alternatively, named on the vehicle owner’s insurance policy, there is no need for additional proof that the driver is authorized to drive the vehicle as a TNC vehicle.⁴⁵ For these reasons, Uber urges the Division to strike these provisions from the TNC Rules.⁴⁶

Uber also suggests amendments to proposed Rules 5.3(E) and 5.5(M), which restrict TNC drivers from being connected to a TNC’s digital network for more than 12 hours in a 24-hour period without a prescribed amount of rest. Uber also objects to the provision in Rule 5.5(M) which requires TNCs to ask their drivers if they have “driven for another TNC during the last 24 hours....” Uber contends that these provisions are “inconsistent with legislative intent, overly

⁴⁴ Id., p. 13.

⁴⁵ Uber written comments, dated July 28, 2017, pp. 1-3.

⁴⁶ Id., p. 3.

burdensome, and unnecessarily intrudes into drivers' private lives – without providing a safeguard against the risks of drowsiness.”⁴⁷ Uber also argues that “[l]imiting the time a TNC driver can be connected to a TNC digital network to a single 12 hour ‘shift’ in a 24-hour period unintentionally disincentivizes breaks and could lead to unsafe behaviors.” Uber added that if the Division includes some limitation in its Rules, the limitation should be based on “driving time” and not the time the driver is “logged into the app.” Uber relates that this is “a more accurate way of approaching driver hours, and preserves TNC drivers’ existing self-regulation, their ability to take breaks, and existing incentives to take rest periods when needed, all important components of the TNC model.” Uber also believes that drivers, not the TNC, should remain responsible for monitoring their own rest. Uber emphasizes that its “Community Guidelines” “make it clear that drivers should take breaks if they feel tired.”⁴⁸ Additionally, Uber maintains that drivers should not need to report their time driving for competing TNC networks. Uber argues that this requirement is outside the scope of the statute, an “unpermitted intrusion into drivers’ private lives...,” contrary to what is expected from “independent contractors” and “detrimental to healthy competition and impossible to enforce.”⁴⁹

Uber next expressed its concerns with the “daily driver list” provision contained in Rule 5.4(C). Uber asserts that requiring TNCs to share driver lists on a daily basis with the Division would be “unnecessary and burdensome.” Uber opines that such lists are unnecessary because TNC statutory law “already

⁴⁷ Id., p. 3.

⁴⁸ Id., pp. 4-5.

⁴⁹ Id., pp. 6-8.

requires a TNC to provide the Division information about a driver involved in an incident -- including whether a driver is still affiliated with the TNC – upon request, if the incident involves an alleged violation of the TNC law or if such information is necessary to resolve a complaint against a driver.” Uber also contends that its “driver rating system” provides a better method for keeping “unsatisfactory” TNC drivers from continuing to provide TNC services. Uber further contends that the Division’s proposed daily drivers list rules “are antiquated and inconsistent with the updated TNC model, and they do not serve any legitimate safety or welfare goal.”⁵⁰ In closing on this issue, Uber suggests that if the Division decides to include a driver list requirement the list should be provided “on an annual basis only.”⁵¹

Uber also suggests that the Division strike the requirements contained in Rule 5.5(K). Uber relates that maintaining records on every driver login far exceeds any step necessary to ensure safety of drivers and riders. Uber reasons that TNCs “are already required to maintain records of trips each driver performs... including total miles driven and fares collected.” Uber asserts that extending this requirement to include every login “would create significant administrative burden and intrude on driver privacy without making a meaningful difference to driver and rider safety.” Uber also contends that “inspecting such voluminous data would be inefficient and costly for the Division, as it would result in a great deal of additional meaningless ‘noise’ around the meaningful TNC data the Division would more realistically want to inspect.”

⁵⁰ Id., pp. 8-10.

⁵¹ Id., p. 10.

Similarly, Uber objects to the requirement that TNCs make available records of every complaint filed against their drivers. Uber finds this requirement “overbroad and problematic to implement.” Uber contends that not all complaints “necessarily stem from any driver activity; rather, complaints are often related to a trip route or product quirk, like mis-identification of a building’s entry or exit door, a poor or inconvenient pick-up location estimate, or waiting for a previous passenger to exit a vehicle before entering.” Uber also contends that because the Division already possesses the authority to investigate complaints on its own, the Rule 5.5(M) reporting requirement is unnecessary.⁵²

Next, Uber urged the Division to strike Rule 5.5(H), based on Uber’s conclusion that the Rule is “cumbersome and unnecessary.” The Rule requires TNCs to suspend drivers upon complaints involving “zero tolerance” prohibitions (i.e., drugs and alcohol usage) and report such complaints, as well as Uber’s investigatory findings, to the Division. Uber contends that this rule “goes well beyond what the Rhode Island legislature anticipated in its statutory zero tolerance policy.” Uber asserts that its technology utilizes “built-in safety measures [that] proactively respond to issues related to impaired driving, by tracking rider feedback through the star rating system and monitoring records of trips taken. If these issues or complaints are confirmed, partners lose access to the network....”⁵³ Based on Uber’s commitment to remove impaired drivers from

⁵² Id., pp. 10-12.

⁵³ Id., pp. 12-13.

its network, the Company reiterated that the complaint reporting requirement in Rule 5.5(H) is unnecessary.⁵⁴

Uber next argued that the penalty provisions contained in Rule 5.9, which Uber describes as “vague” and “discretionary,” “unnecessarily threaten TNCs’ and TNC drivers’ ability to operate at all.”⁵⁵ Uber fears that the Division “could revoke the TNC’s permit for even a minute or unintentional violation....” Uber contends that if “the very TNC permit that allows a TNC to operate is at stake, TNCs cannot invest in the Ocean State or expend resources to build a business there.” Accordingly, Uber urges the Division to instead “impose functional parameters on what violations of applicable rules and regulations would implicate TNCs’ licenses, and which violations would carry a lesser penalty.”⁵⁶

Uber also questioned the reasonableness of Rule 5.9(C), which identifies the Division’s authority to impose an immediate suspension of a TNC permit holder’s authority to operate and/or a TNC driver’s authority to drive “if such action is deemed in the public interest.” With respect to drivers, Uber contends that the Division should only impose such sanctions for “intentional” “repeated or substantial violations.” Uber also wants the Division to define what it means by “public interest.”⁵⁷

In its final comments, Uber proffered a few miscellaneous recommendations. Specifically, Uber observed that Rule 5.5(A) states that “no

⁵⁴ Id., p. 13.

⁵⁵ Id., pp. 13-14.

⁵⁶ Id., p. 14.

⁵⁷ Id., pp. 14-15.

person may operate a TNC without a permit,” “but does not specifically allow TNCs already operating to continue to do so.”⁵⁸

Uber also contended that Rule 5.5(B)(3) requires more information regarding background check mechanics than is specified in the statute. Uber questions the legality of the Division’s request that TNCs provide “the methodology and the time required for each background check....” Uber contends that such requirement “could implicate potential trade secret information, all of which is substantially more intrusive than what the legislature intended.”⁵⁹

Uber also requests that the Division “narrow proposed Rule 5.6(E) to “declared” disasters and states of emergency to avoid potential ambiguity about what situations it might include.”⁶⁰

Finally, Uber requests that the Division strike the language in proposed Rule 5.11 that would permit the Division to notice a hearing “by publication alone.” For drivers, Uber asserts that “notice by traditional means” would be preferential.

5. Findings

The Division appreciates the data, views and arguments that were offered by the TNC, taxicab, PMV and insurance industries during this rulemaking proceeding. Many of these comments and recommendations have been accepted by the Division and incorporated into the Division’s final TNC Rules.

⁵⁸ Id., p. 15.

⁵⁹ Id., p. 16.

⁶⁰ Id.

Before addressing the remaining areas of discord, the Division must acknowledge that the record reflects that PMV and taxicab certificate holders in Rhode Island have voiced persuasive support for the enhanced regulation of TNC services. It is obvious that many of these certificate holders believe that the instant TNC Rules are a necessary step in leveling the competitive playing field between these diverse modes of passenger transportation services. It is also clear from the record that the Independent Insurance Agents believe that additional regulation of TNC services would be beneficial to the public.

a. Level playing field

Messrs. Signore, Tartaglione, Rahaman, Oisamaiye, Adesina and Finneran, representing taxicab and PMV interests, uniformly spoke in favor of more TNC regulation in order to level the playing field in what they see as an unfair competitive landscape. Specifically, these speakers lamented that TNC companies and TNC drivers operate at a significant economic advantage over taxicabs and PMVs due to the fact that their insurance premiums are much lower and that TNC vehicle standards are far less stringent than they are for taxicabs and PMVs. As a result of these reduced overhead costs, TNCs are able to charge lower rates, which, according to these speakers, is devastating the taxicab and PMV industries in Rhode Island.

The Division recognizes that the advent of TNC services in Rhode Island has had a dramatic negative impact on the economic and competitive viability of the State's taxicab and PMV companies. The Division acknowledges that many of these companies have gone out of business or have been forced to significantly

reduce their operations due to revenue losses directly related to TNCs. Unfortunately, the Division's authority to alleviate this hardship for taxicabs and PMV companies, through rulemaking, is severely limited. The inherent disparate operating costs for TNCs has its roots in Rhode Island statutory law, which cannot be altered through administrative regulations. The Legislature has approved the TNC model with a full understanding that such services would be provided with drivers' personal vehicles and that such services would be provided in direct competition with existing taxicabs and PMVs. Under this statutory law (R.I.G.L. Chapter 14.2), TNCs and their drivers have been exempted from many of the vehicle-related and driver-related regulations that apply to taxicabs and PMVs. This change in the traditional regulatory scheme for TNC services has created a transportation modality that places taxicabs and PMVs, which are still regulated under the traditional regulatory framework, at a competitive disadvantage. If this unbalanced competitive interaction between TNCs and taxicabs and PMVs is to be placed on a different trajectory, it will have to be accomplished through a legislative initiative – not through rulemaking.

That said, the Division wants to make it clear that it takes its regulatory responsibilities very seriously and will fully exercise its plenary authority within the limits of statutory law. Consistent with the Division's legislative charge under R.I.G.L. Chapter 14.2, the Division shall take all necessary steps to enforce the regulatory standards that do apply to TNCs and their drivers to ensure that the "playing field" between TNCs, taxicabs and PMVs remains as "level" as statutorily

possible, and that the public is safely and adequately serviced by all transportation services.

b. Daily drivers' list

Both Lyft and Uber have voiced opposition to Rule 5.4(C), which requires that TNCs certify to the Division that their drivers have been properly vetted and have satisfied all of the statutory requirements for TNC driver eligibility “by providing the Division with an electronically-delivered daily ‘drivers list’ that verifies compliance....” Under the proposed rule, the daily “drivers list” must include: (1) the driver’s full name, (2) the plate number (and state) that will be displayed on the vehicle the driver plans to use, (3) the driver’s license number (and state), and (4) the date on which the driver had been authorized to begin providing TNC services. The rule also reflects that this information will not be treated as a public record.

Uber and Lyft contend that having to provide the Division with a daily drivers’ list would be “prohibitively onerous” and “unduly burdensome.” They also argue that such a requirement would be “redundant” and “unnecessary” in view of other provisions contained in R.I.G.L. Chapter 14.2. Though the Division acknowledges that requiring TNCs to provide drivers’ lists on a regular basis adds an additional administrative burden, the Division finds that the additional information is justified as it satisfies a compelling regulatory effort to maximize protections for the riding public. The Division also finds that the benefit derived from this obligation is not otherwise replicated under other requirements contained in the law. Knowing who is authorized to drive for TNCs, and which

vehicles are being used as TNC vehicles, is crucial to the Division's ability to effectively supervise this new transportation industry. Such requirement is also consistent with the manner in which the Division supervises the taxicab and PMV industries. Notwithstanding, and sensitive to the concerns of Lyft and Uber, the Division is willing to reduce the frequency of this requirement to a "weekly" basis. This change has been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

c. Pre-hearing suspensions

Uber and Lyft both maintain that it would unreasonable for the Division to impose an "immediate suspension" under Rule 5.3(K) without first providing the TNC driver with a hearing and opportunity to be heard. The Division disagrees. Under R.I.G.L. §39-14.2-3, the Division is authorized to promulgate rules and regulations that the Division deems necessary to maximize TNC passenger/rider safety. The Division strongly maintains that without the ability to enforce an immediate suspension, when circumstances warrant, the Division's ability to assure safety, in real-time, is substantially jeopardized. Rule 5.3(K) provides that in such cases the Division will endeavor to schedule and conduct a hearing "as soon as possible to gauge the appropriateness of the immediate suspension and to determine if the suspension shall continue." The Division finds this post-suspension hearing to be a sufficient balance between passenger safety and driver due process.

Related to this issue, Lyft also sought an amendment to Rule 5.9(C) to guarantee that a TNC or TNC driver could only be suspended after a hearing and

opportunity to be heard. However, for the same reason stated above, the Division finds a post-suspension hearing to be a sufficient balance between the need to guarantee passenger safety and the driver's due process rights.

d. Notification on insurance to vehicle owner/insured

Uber and Lyft both object to the requirement in Rules 5.4(A)(1), 5.4(B)(5) and 5.5(B)(4) that mandate notification to and written authorization from the vehicle owner/insured when such person is not the prospective TNC driver. Uber argues that this requirement is "wholly unnecessary" as Uber already requires that the driver either be the registered owner of the vehicle or named as an insured on the owners auto insurance policy. Lyft contends that the driver should have this obligation to inform the vehicle's owner/insured rather than placing that burden on the TNC.

After considering Lyft's and Uber's concerns over this issue, the Division agrees that providing special notice to a vehicle's owner/insured, in cases where the vehicle's owner is not the TNC driver, is ill-advised. The Division is mindful of the supportive comments that were offered by the Independent Insurance Agents over the Division's original interest in requiring such notice, but after further consideration over the issue, the Division believes that regulatory efforts to safeguard such vehicle owners is indeed outside the scope of the Division's authority. Accordingly, the Division has excised all such notice requirements from its final TNC Rules. These changes have been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

e. Time restrictions on being connected to TNC network

The Division has considered the arguments from Lyft and Uber regarding Rule 5.3(E)'s prohibition on being connected to a TNC digital network for more than 12 hours in a 24-hour period without rest and finds their requested amendment to the rule to be reasonable. In view of the apparent efforts TNCs unilaterally make to protect against driver fatigue, the Division agrees to limit the prohibition to the amount of time drivers spend providing prearranged rides. This change has been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

As a related issue, Lyft and Uber have also objected to the requirement contained in Rule 5.5(M) that requires TNCs to inquire whether its drivers have been driving for another TNC(s) when they connect to the TNC's digital network to assist in enforcing maximum daily driving time restrictions. Lyft contends that because it cannot verify the accuracy of the information, it should not have to pose the question. Uber has argued that this requirement is outside the scope of statutory law and would further constitute an invasion of the drivers' privacy.

While the Division agrees that verification cannot be made by the TNC, the importance of asking the question is twofold. First, it places the driver on notice that there is a daily limitation on how many hours the driver may drive for a TNC without rest. Second, it establishes a record in the event that driver fatigue later results in an accident, which may subsequently form the basis of a complaint and regulatory action regarding that driver. The Division also finds that making such inquiry to the drivers is neither a violation of the drivers' privacy rights nor

inconsistent with the authority conferred under R.I.G.L. §39-14.2-3. Accordingly, the Division shall retain this Rule 5.5(M) requirement.

f. Record keeping and reporting on complaints

Uber has expressed concern with the requirements contained in Rule 5.5(K) that require TNCs to keep records of complaints made by riders against drivers. Uber has also objected to reporting such complaints to the Division.

Addressing the second concern first, Rule 5.5(K) does not require TNCs to report all complaints to the Division. The only requirement for such reporting is related to “zero-tolerance” complaints, pursuant to Rule 5.5(H)(1). Under Rule 5.5(M), TNCs are simply required to maintain records of complaints against drivers for a period of at least two years.

With respect to the requirement that the records be maintained by TNCs, the Division finds that complaint record keeping against drivers is essential in the context of investigating complaints made to the Division by riders claiming mistreatment by drivers. Patterns of misbehavior that result in repeated complaints against drivers cannot be ignored in cases where the fitness of a driver is called into question by a rider(s). The Division shall retain this requirement in the rules.

g. Record keeping on log-in and log-out times

Uber has also expressed concern with the requirement contained in Rule 5.5(K) that mandates that TNCs maintain all driver ‘logs into’ and ‘log out of’ and related records. Uber contends that maintaining such records “far exceeds any

step necessary to ensure [the] safety of drivers and riders...” Uber also contends that the maintenance of these records would constitute an administrative burden and violate the drivers’ privacy rights. However, the Division finds that this information may be required and necessary in cases where the Division is conducting an investigating into a complaint. The Division also believes that TNCs will have ready access to such information through their own record-keeping efforts and, as such, finds that such record- keeping should not be unnecessarily burdensome on the TNCs.

h. Certificate of insurance requirement

The Independent Insurance Agents have argued that in the interest of the public’s financial safety, TNCs should be compelled to provide the Division with a “Certificate of Insurance” copy in order to make policy information readily available to the public. The Division agrees. Moreover, the Division will require TNCs to provide the Division with a copy of the entire insurance policy to ensure that each TNC is operating in full compliance with the requirements contained in R.I.G.L. §39-14.2-14. TNCs shall also require their insurance providers to notify the Division in the event the prescribed insurance protections lapse. This change has been incorporated into the Division’s final TNC Rules (specifically Rule 5.7(A)) attached as “Appendix 1.”

On a related issue, the Independent Insurance Agents have also asked the Division to deny driving rights to TNC drivers who have been in multiple accidents or who are unable to demonstrate adequate driving experience. Regarding this request, the Division finds that it must defer to the driving

eligibility standards contained in R.I.G.L. §39-14.2-7 and that the standards suggested by the Independent Insurance Agents run afoul of the statutory standards.

i. Smoking in TNC vehicles

Mr. Finneran has asserted that Rule 5.3(H), which permits a TNC driver to allow passengers to smoke in their vehicle, is “unlawful” under Rhode Island Department of Health rules and regulations (“RIDOH Rules”). However, after reviewing the applicable RIDOH Rules, the Division must question whether these rules apply to the personal vehicles used by TNC drivers. Based on the definitions contained in the RIDOH Rules, the Division finds that such personal vehicles would not fall into the rubric of “public places,” which is a necessary criterion for applicability. The only sub-category of “public place” that comes close are “public transportation facilities,” which includes “buses and taxicabs, under the authority of the state of Rhode Island....” However, the vehicles used by TNC drivers do not come under the authority of the state of Rhode Island. There are personal license plates on these vehicles, not “public” plates like on buses and taxicabs. Indeed, R.I.G.L. §39-14.2-1(12) provides that TNC services shall not be considered to be akin to jitney, taxicab, public motor vehicle or other common carrier services. Additional evidence of non-public treatment is also evident from the fact that the State is not requiring special licensing or permitting for TNC drivers or the vehicles used to provide TNC services.

Further support for this non-public treatment is apparent from the fact that the prohibition against smoking in “places of employment,” also contained in

the RIDOH Rules, would similarly not apply. Under R.I.G.L. §39-14.2-16, the General Assembly has made it clear that TNC drivers are not employees of the TNC. They are independent contractors.

Based on the above observations, the Division does not believe that the RIDOH Rules apply to vehicles used to provide TNC services. Moreover, as the option for passenger smoking in the vehicle is controlled by the vehicle's driver, and that non-smoking TNC riders can opt out of riding in vehicles that permit smoking, the Division see little potential for conflict over this issue.

j. State vehicle inspections

Lyft has taken the position that Rule 5.3(B)(3) ought to be amended to avoid any confusion regarding the use of uninspected vehicles from states that do not require such inspections. However, the Division finds no such potential for confusion under Rule 5.3(B)(3). Inasmuch as the Rule conforms exactly to the relevant statutory provision and because the Rule (and statute) makes clear that the safety inspection requirement is linked to the inspection requirements of the state where the vehicle is registered, there can be no confusion. The Division therefore finds Lyft's requested amendment to be unnecessary.

k. When TNC insurance is in effect

Lyft has suggested an amendment to Rule 5.3(I) to make it clear that all TNC insurance requirements apply only when a TNC driver is engaged in TNC services. The Division has considered Lyft's proposed amendment and finds the

amendment reasonable. This change has been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

1. TNC vehicle restrictions on passengers and baggage

Lyft contends that Rule 5.3(J) should be amended to remove the provision that prohibits the operation of a vehicle "when it is so loaded or when there is in the front seat such number of persons as to obstruct the view of the driver to the front or sides, or to interfere with his/her control over the vehicle." Instead, Lyft suggests a prohibition limited only to the passenger carrying capacity of the vehicle. The Division rejects this proposed amendment. The safety-related intent of this rule is obvious and eminently reasonable.

m. Grounds for suspension/revocation/fines

Both Lyft and Uber have voiced concerns that Rule 5.3(K) authorizes what they consider to be unreasonably broad discretion for fining and suspending TNC drivers.

Also related to this issue, Lyft seeks an amendment to Rule 5.9(D) to limit the Division's ability to immediately suspend a TNC driver for his or her failure to appear for a duly noticed scheduled hearing. Specifically, Lyft contends that the Division's authority to suspend a TNC driver should only be exercised for TNC drivers who "repeatedly" fail to appear for a hearing; and even then, only after the driver "received appropriate notice of hearing, and failed to provide good cause for his or her inability to appear.... following final notice of a hearing."

Uber also expresses concerns with the penalty provisions of Rule 5.9(B). Specifically, Uber contends that the “discretionary thresholds for [suspending or] revoking a TNC permit or a driver’s right to drive” are “extreme and disproportionate.” Uber argues that these potential penalties will discourage TNCs from investing in Rhode Island. Uber further argues that the Division must “impose functional parameters on what violations of applicable rules and regulations would implicate TNCs’ licenses, and which violations would carry a lesser penalty.” Uber recommends that revocation should only be warranted in cases of “intentional or reckless violations.”

Uber also opposes the provision in Rule 5.9(C) that authorizes sanctions for TNCs and drivers who fail “to adhere to and comply with any of these rules and/or any applicable state statutes...” Uber maintains that sanctions should only be imposed for “repeated or substantial violations.”

First, with respect to Lyft’s concerns about immediate suspensions for drivers who failure to appear for a hearing, the Division finds this recommendation to be completely devoid of merit. On the one hand, Lyft is arguing that a TNC driver should never be suspended without a hearing first. On the other hand, Lyft is arguing that its drivers should not be suspended for failing to appear for a duly noticed hearing. Clearly, these positions are in conflict. The Division finds that protecting the public from TNC drivers who are suspected of violating the law or who pose a potential immediate danger to the riding public is paramount; that objective cannot be jeopardized by allowing drivers to evade regulation by failing to show up for a duly noticed hearing. If it is determined

that the driver had a reasonable excuse for not attending a hearing, the Division may certainly grant the appropriate relief.

As it relates to the Division's discretion to impose sanctions for any violations of the law, the Division relies on R.I.G.L. §39-14.2-22(a). Under this law, the Division "*may impose civil sanctions upon any TNC or TNC operator subject to the applicable provisions of this chapter and/or any rules and regulations promulgated under it, who or that shall knowingly or willfully cause to be done any act prohibited by applicable sections of this chapter, or who or that shall be guilty of any violation of this chapter or the rules and regulations. The sanctions may include a civil penalty (fine) or the suspension or revocation of the TNC's license.*" R.I.G.L. §39-14.2-22(c) further provides that "[n]othing in this section shall be construed to limit the division's authority to fine TNCs or TNC drivers or suspend or revoke TNC licenses." With respect to the Division's proposed rules, the only limitation is that the rules be "consistent" with the statutory law and be, in the opinion of the Division, "necessary to assure adequate, safe, and compliant service..." (R.I.G.L. §39-14.2-3). Predicated on this broad legislative grant of regulatory authority, the Division shall not accept any recommendations that would effectively limit or impede the Division's legislative charge to assure adequate, safe and compliant service. Accordingly, the Division must reject Lyft's and Uber's proposed amendments to Rules 5.3(K) and 5.9(B), (C) and (D).

n. Insurance warning to riders for non-network rides

Lyft has urged the Division to strike Rule 5.6(D)(4), which requires a TNC-issued receipt to include a warning to riders that there is no insurance protection in place when riding with a TNC driver who is not providing services through the TNC's digital network. Lyft contends that that there "does not appear to be real utility in providing this information."

The Division agrees. Upon further consideration, the Division is inclined to accept Lyft's argument that such notice is not likely to bring about the desired result of discouraging non-network services; even assuming that there is a *de facto* need to provide the notice in the first place. This change has been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

o. Optional "hold harmless" and collision coverage

Lyft has also recommended that the Division amend Rule 5.7(B)(1) to strike coverage requirements that would extend insurance responsibilities for TNCs. Lyft argues that not only is this requirement inconsistent with statutory law, it would also be "extremely burdensome" for the Company.

In view of the Division's decision to excise the notice requirement to vehicle owners/insureds that was originally contained in Rules 5.4(A)(1), 5.4(B)(5) and 5.5(B)(4), *supra*, the Division finds the "hold-harmless" provisions of Rule 5.7(B) to be unnecessary. Accordingly, the Division will strike Rule 5.7(B) from the final TNC Rules. This change has been incorporated into the Division's final TNC Rules, attached as "Appendix 1."

p. Limit on records subject to inspection

Lyft contends that the Division should limit the number of records it may inspect under its audit powers to 25. However, the Division is not inclined to voluntarily limit the authority it is granted under R.I.G.L. §39-14.2-3 through its TNC Rules. Pursuant to statutory law, the Division “shall have the right to visually inspect a sample of records that the TNC is required to maintain.” The Division finds no regulatory benefit to interpret “a sample” to mean just 25 records. Accordingly, the Division must reject Lyft’s proposed amendment to Rule 5.8(A).

q. Notice of hearings

Lyft has requested that the Division amend Rule 5.11(A)(1) to include language “that will ensure that parties receive appropriate notice of a hearing.” Specifically, Lyft urges the Division to remove a provision that would allow a Division hearing officer to reduce the prescribed 10-day notice requirement if he or she “determines that less notice is reasonable.”

Uber has similarly requested that the Division amend Rule 5.11(A)(1) to require “that the Division deliver notice by traditional means, and not require partners [drivers] to submit to potential notice by publication alone.”

With respect to Lyft’s comments, unfortunately, it appears that Lyft has misconstrued the Division’s intentions behind this provision. The latitude granted the hearing officer is to primarily allow for a more expeditious hearing if requested by a TNC or TNC driver. Presumably, this would be especially

important to a TNC driver in cases where the Division has imposed an immediate suspension – pending a hearing. In order to preserve this latitude, the Division must reject Lyft’s recommendation to remove this language.

Uber’s concerns are also unfounded. The Division’s use of a notice by “publication” would represent an “additional” form of notice – not an alternative form of notice. The Division would always provide a hearing notice to a TNC and/or TNC driver by first class mail or personal service.

r. Zero-tolerance suspensions

Both Lyft and Uber have expressed concerns with the requirement in Rule 5.5(H)(1) that requires a TNC to immediately suspend a TNC’s driver’s access to the digital network upon receipt of a complaint from a TNC rider that alleges that the driver was influenced by drugs or alcohol while driving. The rule requires the suspension to remain in effect until the TNC completes its investigation into the complaint. The TNC is also required to provide the Division with a copy of the complaint and a report relative to its investigatory findings and action. Lyft contends that discerning whether the feedback it receives from its rider rises to the level of a complaint is difficult. Lyft also maintains that providing the Division with copies of the complaint and its investigatory findings may raise legal privacy issues. Lyft requests clarification from the Division on the meanings of “complaint” and “report,” as used in the rule.

Uber contends that because the Division is already authorized to conduct investigations into complaints, and conduct hearings when necessary, there “is simply no need for additional reporting of complaints.” Uber also asserts that its

technology better facilitates the removal of problem drivers. Additionally, Uber argues that this reporting requirement would add a “substantial burden without proportionate gains in favor of safety or public welfare.”

The Division finds that minimal clarification is required in this matter. The term “complaint,” as used in the rule, means that if the rider communicates dissatisfaction with the ride based on the rider’s perception that the driver was behaving in an intoxicated manner – that constitutes a complaint within the meaning of the rule. The term “report,” as used in the rule, denotes a written document from the TNC that describes what investigation it conducted in response to the complaint and what findings and action resulted therefrom. Further, in response to Lyft’s concerns about privacy, and Uber’s concerns about the burden of reporting complaints, the Division finds that the “zero tolerance” nature of this type of complaint demands a prompt and reviewable response from the TNC. Rule 5.5(H)(1) is designed to ensure that prompt response.

s. Operating a TNC without a permit

Uber has questioned why Rule 5.5(A) does not provide reference to R.I.G.L. §39-14.2-5(a), which authorizes TNCs that were operating in Rhode Island before November 3, 2016 to continue to operate “...until the division creates a permit process... and provides a reasonable period in which to apply and obtain a permit.” In response to Uber’s concern, the Division finds that the need to reference this statutory provision in the TNC Rules is unnecessary. The statutory provision in issue is known to Lyft and Uber (the only two TNCs that were

operating in Rhode Island on November 3, 2016) and the Division; there is no compelling reason to repeat it in the TNC Rules.

t. Background check mechanics

Uber also expressed concern with Rule 5.5(B)(3)'s requirement that a TNC applicant identify the entity that conducts its background checks, provide details on the methodology to be used in conducting background checks and provide details on the information required to be provided by prospective drivers in furtherance of conducting background checks. Uber believes that providing such information exceeds the relevant statutory requirements and could implicate potential trade secrets. The Division, however, does not share this concern. The importance of guaranteeing the integrity and efficaciousness of TNC driver background checks is of paramount interest to the Division. The Division finds that the prescribed regulatory requirements contained Rule 5.5(B)(3) will better assist the Division in establishing a meaningful level of confidence in the accuracy of the non-biometric background checks conducted by TNCs. The Division maintains that this additional layer of scrutiny is required in order for the Division to carry out its core mission to assure adequate, safe and compliant TNC services in Rhode Island.

u. Dynamic pricing restrictions

During the hearing, the Motor Carrier Section indicated that it wished to add an additional provision to the TNC Rules, which corresponds to a statutory requirement contained in R.I.G.L. §39-14.2-3(b). The new rule language, offered as Rule 5.6(E) and which substantially parallels the statute, reads as follows:

All TNCs shall establish and implement a written policy capping dynamic pricing during disasters and relevant states of emergency and make this policy available on its website and in its web-application. The policy shall also be filed with the Division at the time the TNC applies for its initial TNC Permit, and re-filed with the Division upon any change/amendment to the policy.⁶¹

In its post-hearing written comments, Uber requested that the Division narrow proposed Rule 5.6(E) to “declared” disasters and states of emergency to avoid potential ambiguity about what situations it might include.

Upon review of the actual statutory provision contained in R.I.G.L. §39-14.2-3(b), the Division is inclined to reject Uber’s recommendation to narrow the rule. Under R.I.G.L. §39-14.2-3(b), the legislature has applied the requirement for a written policy capping dynamic pricing to the periods “during disasters and relevant states of emergency...” This is the same exact language that appears in proposed Rule 5.6(E). As the Division is uncertain as to the meaning and likelihood of a so-called “declared” disaster, the Division finds that proposed Rule 5.6(E) is more consistent with the legislative mandate. Accordingly, the Division shall adopt this Rule 5.6(E) requirement. This new Rule 5.6(E) has been incorporated into the Division’s final TNC Rules, attached as “Appendix 1.”

In conclusion, the Division finds the proposed amended TNC Rules, as modified through the findings contained herein, to be reasonable and in conformance with relevant statutory mandates.

Now, therefore, it is

(22904) ORDERED:

⁶¹ See Division Exhibit 2.

1. That predicated upon and modified by the findings contained herein, the Division hereby adopts the “*Rules and Regulations Governing the Transportation of Passengers via Transportation Network Companies,*” as reflected in “Appendix 1” to this report and order.
2. That “Appendix 1” is hereby incorporated by reference.
3. That the Division’s Rules Coordinator is hereby instructed to file a certified copy of the attached “*Rules and Regulations Governing the Transportation of Passengers via Transportation Network Companies*” (Appendix 1) with the Rhode Island Secretary of State as soon as practicable, and also to fully comply with the filing requirements contained in R.I.G.L. §42-35-2.6 and §42-35-4. The Division will endeavor to file the instant Rules with the Rhode Island Secretary of State on or before October 23, 2017 in order to facilitate an effective date of November 13, 2017.
4. That the newly amended “*Rules and Regulations Governing the Transportation of Passengers via Transportation Network Companies*” shall take effect on November 13, 2017.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 18, 2017.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Macky McCleary
Administrator