

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ADOPTION OF  
RULES RELATED TO REGULATION OF  
TRANSPORTATION NETWORK  
COMPANIES.

CASE NO. 16-122-TR-ORD

## FINDING AND ORDER

Entered in the Journal on February 21, 2018

### I. SUMMARY

{¶ 1} The Commission approves proposed rules contained in Ohio Adm.Code Chapter 4901:2-23 related to the regulation of transportation network companies.

### II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} The 131st Ohio General Assembly adopted Amended Substitute House Bill 237 (HB 237) to, in part, amend R.C. 4925.01 through 4925.10. Newly adopted R.C. 4925.02 directed that the Commission may adopt rules under R.C. Chapter 119 for purposes of issuing permits to transportation network companies (TNC). Under R.C. 3942.01, a TNC is any entity operating in Ohio that uses a digital network to connect riders to drivers who provide transportation services in their personal vehicles for a fee. The Commission has opened this docket in order to consider and adopt new rules in conformance with R.C. 4925.02.

{¶ 3} In addition, on January 10, 2011, the governor of the State of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 4} Also, pursuant to R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, in accordance with R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.

{¶ 5} On February 22, 2016, the Commission held a workshop in this proceeding to enable interested stakeholders to offer proposals for Staff's consideration of rules to be adopted as Ohio Adm.Code Chapter 4901:2-23. At the workshop, Staff gave an overview of the rulemaking process and described the rules that Staff was proposing for comment. Several stakeholders spoke at the workshop offering general comments in regard to the rules.

### III. DISCUSSION

{¶ 6} By Entry issued February 23, 2017, the Commission issued for comment Staff's proposed rules to implement H.B. 237, as proposed Ohio Adm.Code Chapter 4901:2-23, and the BIA. Thereafter, comments were filed by Rasier, LLC (Rasier), Lyft, Inc. (Lyft), and TechNet.

#### A. *Proposed Ohio Adm.Code 4901:2-23-03*

{¶ 7} In order to receive a permit to operate as a TNC, R.C. 4925.02 requires an applicant to comply with the rules adopted under this section as well as submit a fee of \$5,000 and affirm that the applicant will maintain compliance with the applicable requirements established under R.C. 4925.02 to 4925.08 and all applicable rules. Proposed Ohio Adm.Code 4901:2-23-03 provides that in order to receive a TNC permit the applicant must submit a complete and accurate application form, including the affirmations required by R.C. 4925.02, and any other information deemed necessary by the Commission.

{¶ 8} In its comments, Rasier suggests that the rule be amended to include the specific requirements from R.C. 4925.02(C) including: the appointment of an agent located within Ohio; an attestation that the applicant is a TNC and that the applicant will comply with R.C. 4925.03 through 4925.08; proof in the form of a non-expired certificate of insurance that the applicant satisfies all applicable insurance requirements set forth in R.C. 3942.02 to 3942.04; and a permit fee of \$5,000. Rasier also argues that the proposed rule language requesting “any other information deemed necessary by the Commission” should be deleted. Rasier claims that this language could allow a subsequent Commission to impose requirements on TNC applicants that are beyond the statutory mandates.

{¶ 9} The Commission agrees with Rasier that the proposed rule should request additional information from the applicant. Specifically, applications should require the appointment of an authorized Ohio agent for the TNC as well as an explanation of how the TNC complies with the insurance requirements outlined in R.C. 3942.02 to 3942.04. This information will assist the Commission in administering the permit process and providing oversight of the TNC. However, we believe that restating in the rule the two specific requirements that are already set forth in R.C. Chapter 4925 is repetitive and not necessary. Accordingly, we will amend the rule to add language requiring the applicant to identify the name, street address, e-mail address, and telephone number of its regulatory point of contact and statutory Ohio agent, and to explain, in the form of a non-expired certificate of insurance or other means, that the applicant satisfies all applicable insurance requirements set forth in R.C. 3942.02 to 3942.04. Further, the Commission declines to adopt Rasier’s recommendation regarding the elimination of the portion of the rule that allows the Commission to seek additional information. This provision likely does not provide excessive additional burdens on TNC applicants, but rather, it allows the Commission, when necessary, to more fully examine an application that is potentially lacking.

*B. Proposed Ohio Adm.Code 4901:2-23-05*

{¶ 10} Proposed Ohio Adm.Code 4901:2-23-05 sets forth the process for issuance of a TNC permit.

{¶ 11} Rasier submits that, while 4901:2-23-05(C) provides that an applicant shall submit a renewal application form 30-60 days before the expiration date, Ohio Adm.Code 4901:2-23-05(D) states that, if Staff does not act upon an application within 30 days of submission, an applicant may file a petition for a hearing. Rasier claims that this process is prejudicial to applicants in the timing it creates. For example, Rasier contends that if an applicant filed its renewal request 35 days before the expiration date, and Staff fails to act within 30 days, the applicant could be unable to operate unless the Commission takes affirmative action regarding the renewal application. Rasier and Lyft both propose that the Commission modify the rule in the same way that permits for competitive retail electric service are issued, under Ohio Adm.Code 4901:1-24-10, such that the application is automatically approved, unless suspended.

{¶ 12} Rasier also asserts that the proposed rule prevents due process to an applicant if the Commission denies a permit or renewal application. Rasier submits that this rule should include language such that, if the Commission denies an application, the Commission should issue an order notifying the applicant of the basis of its decision. Rasier also contends that the rule should be amended to allow an automatic permit extension if the Commission fails to act on a late-filed renewal permit application.

{¶ 13} The Commission agrees that an automatic approval process is appropriate. We first note that, as with the approval process for all other certificates issued by the Commission's Transportation Department, once the information is completed and submitted to the Commission Transportation Staff, the transportation certificate application is approved and the certificate is issued. Accordingly, the Commission does not anticipate a situation where, absent some definitive declaration from the Commission or Staff that no

such permit be issued to an applicant, the 30 day deadline would be exceeded. Nonetheless, the Commission agrees that an automatic approval process is appropriate to prevent timing issues in a situation where the Commission does not act. However, the Commission disagrees with Rasier's request that late-filed renewal applications should be automatically granted a motion for an extension of the review period. First, we reiterate the Commission's anticipation that properly completed applications and renewal applications will be approved promptly. Further, an automatic extension of the review period would essentially nullify the functionality of the rule establishing that renewal applications be filed 30-60 days prior to permit's expiration date. Additionally, this does not prevent TNCs from filing a motion to request an extension or filing a motion seeking expedited treatment of said motion.

{¶ 14} The Commission also finds that, if the Commission denies an application, it is appropriate for the applicant to receive notice as to why the application was denied. Thus, if Staff denies a TNC application, it should serve a Letter of Staff Determination upon the applicant. The letter should provide a brief explanation of why the application was denied. Thereafter, if an applicant seeks to contest the denial, within 30 days following service of the Letter of Staff Determination, the applicant may file a request for administrative hearing with the Commission's docketing division. The request should be signed by an authorized representative of the applicant and have a copy of the Letter of Staff Determination attached.

**C. *Proposed Ohio Adm.Code 4901:2-23-06***

{¶ 15} Proposed Ohio Adm.Code 4901:2-23-06 provides for examinations of any records, documents, or property of TNCs for the purpose of assessing compliance with the provisions of R.C. 4925 and rules adopted thereunder. This rule also provides that the TNC shall provide authorized Commission employees with access to employees, records, documents, or property as necessary to conduct an examination.

{¶ 16} Rasier contends that the rule provides no notice provision, nor any limitation on the frequency of the examinations, the records to be accessed, or the location of these records. As a result, Rasier claims that the rule would allow the Commission to conduct potentially improper, costly, and time consuming audits on ad hoc intervals and grant the Commission unlimited access to confidential records of TNCs, as well as sensitive information of drivers. Rasier suggests that the rule should be modified so that there are fixed examination schedules and confidentiality protections for TNCs and TNC drivers. Rasier also suggests that TNCs should maintain information for a period not to exceed two years and that inspections be conducted in person and on an audit basis. Further, Rasier contends that such compliance examinations take place no more than twice per calendar year and that all records inspected under this section be designated confidential, not be subject to disclosure to a third person without written consent of the TNCs, and exempt from disclosure under R.C. 4905.07 and 149.43.

{¶ 17} Lyft similarly suggests that the Ohio Adm.Code 4901:2-23-06 should be modified so that any records disclosed under this section shall be treated as confidential trade secrets and not be disclosed to third parties. Lyft asserts that this change would protect the privacy of Lyft passengers and drivers.

{¶ 18} With respect to Rasier's and Lyft's suggestions that all records of the TNC automatically be deemed confidential, we decline to make that change. First and foremost, neither R.C. Chapter 4925 nor R.C. 149.43 expressly exempt from disclosure the records maintained by a TNC in accordance with R.C. 4925.07 that come into our possession through enforcement of the requirements of R.C. Chapter 4925. As such, a general exemption of such records from disclosure through this rule would exceed our authority. While some of these records may actually be exempt from disclosure under R.C. 149.43 on other grounds, without any knowledge of a TNC's records, it is impossible to make a declaration that all documents and materials are automatically deemed confidential.

{¶ 19} TNC's have every opportunity to seek protective status for any information reviewed or sought and reviewed by the Commission, through the filing of a motion for a protective order. While we are sensitive to the need to protect information that is found to be confidential or trade secret, especially related to drivers and passengers, it will be the responsibility of the TNC to identify and seek protective status for any such information that it believes is confidential or trade secret. The Commission has a great deal of experience with investigations of motor carriers that occur during compliance reviews and that often involves sensitive and confidential information related to motor carriers and their drivers. We will accord the same type of appropriate treatment to TNCs and information reviewed by the Commission as occurs with reviews of regulated motor carriers and their drivers.

{¶ 20} With respect to Rasier's suggestion that TNCs should maintain information for a period of at least two years, we agree. R.C. 4925.07 provides that TNCs should maintain records of both drivers and services for not less than two years after the date the services are provided. Therefore, we will modify the rule accordingly.

{¶ 21} As to Rasier's comment that all inspections shall be conducted in person and on a regular audit basis, we do not agree. First, we will not establish a specific number or frequency of audits that may be undertaken by the Commission of a TNC. There may be a variety of reasons why investigations may not occur in any particular year and there may be occasions when multiple investigations may be necessitated, such as with the occurrence of multiple complaints. In addition, we do not agree that TNC investigations should be required to occur in person. Such a requirement could unnecessarily burden the Commission and the TNC. We believe that it is in the interest of the TNC to provide that, when a review of any TNC information is necessary, information deemed relevant by the Commission must be accessible by Commission employees in Ohio. Such access will also eliminate the necessity of the TNC providing the Commission with copies of such documents, unless otherwise ordered by the Commission. Therefore, we will modify the

rule to require that any information sought to be reviewed by the Commission, be accessible to be viewed in Ohio, unless otherwise ordered by the Commission.

{¶ 22} Finally, TechNet suggests that proposed Ohio Adm.Code 4901:2-23-06 should be modified to add language “to the extent necessary to resolve a specific complaint” to help clarify that the ability of the Commission to examine relevant information would only occur in relation to a complaint. As to TechNet’s suggestion, we decline to make that change. There may be a variety of reasons, other than a complaint, necessitating the Commission to examine relevant information pertaining to a TNC.

#### IV. CONCLUSION

{¶ 23} Upon considering Staff’s proposal and the comments, the Commission concludes that a clean version of the attached rules,<sup>1</sup> proposed Ohio Adm.Code Chapter 4901:2-23, as set forth in Attachment A, should be approved.

{¶ 24} The rules are posted on the Commission’s Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve notice of this Finding and Order upon the transportation list-serve. Interested persons are directed to input case number 16-122-TR-ORD in the Case Lookup box to view the rules, as well as this Finding and Order, or to contact the Commission’s Docketing Division to request a paper copy.

{¶ 25} Finally, in accordance with R.C. 119, the attorney examiner is directed to establish a public hearing regarding these rules by subsequent entry.

#### V. ORDER

{¶ 26} It is, therefore,

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<sup>1</sup> The Commission notes that Attachment A shows deletions from and additions to the rules originally proposed and attached to the December 9, 2015 Entry in strikethrough and underline, respectively.



{¶ 27} ORDERED, That proposed Ohio Adm.Code Chapter 4901:2-23, as set forth in Attachment A, be approved. It is, further,

{¶ 28} ORDERED, That the new rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 119.03. It is, further,

{¶ 29} ORDERED, that the attorney examiner issue an entry establishing a public hearing in accordance with paragraph 25. It is, further,

{¶ 30} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:2-23 shall be in compliance with R.C. 106.03. It is, further,

[¶ 31] ORDERED, That a copy of this Finding and Order be served upon Uber, Lyft, Northeast Region TechNet, Ohio Vehicle-for-Hire Safe Industry Practices Association, Professional Independent Agents Association of Ohio, Inc., American Insurance Association, Ohio Insurance Institute, TechNet, FastFingerprints, Demotech, Inc., Ohio Aviation Association, Ohio Association for Justice, Ohio Municipal League, Ohio Department of Insurance, Ohio Department of Taxation, Ohio Bureau of Workers Compensation, and the transportation list-serve.

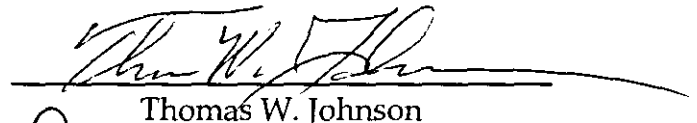
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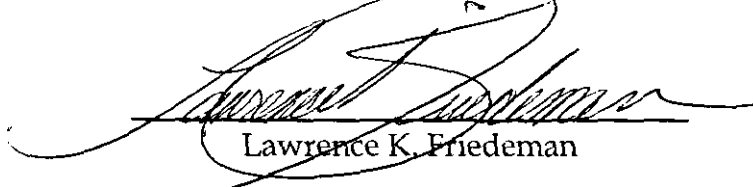
Asim Z. Haque, Chairman



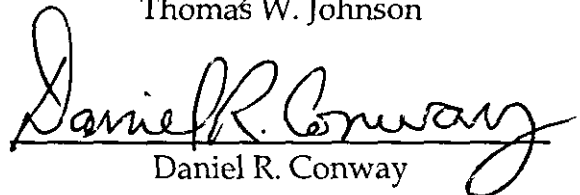
M. Beth Trombold



Thomas W. Johnson



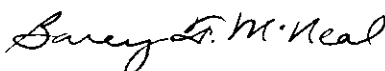
Lawrence K. Friedeman



Daniel R. Conway

NW/vrm

Entered in the Journal  
**FEB 21 2018**



Barcy F. McNeal  
Secretary

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**4901:2-23-01            Definitions.**

- (A) "Applicant" means an entity who submits to the commission the required application forms necessary to receive a transportation network company permit.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Permit" means a transportation network company permit.
- (D) "Respondent" means a transportation network company upon whom an order to show cause or a notice of deficiency has been served.
- (E) "Staff" means employees of the transportation department of the commission.
- (F) "Transportation network company" has the same meaning as in section 3942.01 of the Revised Code.

**4901:2-23-02            Purpose and scope.**

- (A) This chapter governs the permitting of transportation network companies operating within this state, and implements the requirements of Chapter 4925 of the Revised Code.
- (B) The commission may, upon application or upon a motion filed by a party, waive any requirement of this chapter, for good cause shown, other than a requirement mandated by statute from which no waiver is permitted.

**4901:2-23-03            Permitting of transportation network companies.**

- (A) No transportation network company may operate within this state unless such transportation network company possesses a current and valid permit issued by the commission pursuant to this chapter.
- (B) To obtain a permit from the commission, an applicant must make payment of the application fee, submit a complete and accurate application form containing the affirmations required by section 4925.02 of the Revised Code, and provide the following: the name, address, telephone number and e-mail address of the applicant's Ohio point of contact and registered Ohio agent; an explanation of how the TNC complies with the insurance requirements outlined in R.C. 3942.02 to

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3942.04, including if applicable a non-expired certificate of insurance; and any other information deemed necessary by the commission. Application forms shall be posted on the Commission's website.

**4901:2-23-04           Supplementation of information.**

- (A) Upon a request from the staff, an applicant shall provide, within fifteen days, or within a longer time period if agreed to by the staff, any additional information necessary for the processing of an application for a permit or renewal of a permit. Failure to respond to a request for additional information within this time frame will result in the application being rejected and will necessitate the filing of a new complete application.
- (B) A transportation network company that has obtained a permit shall notify the staff within fifteen days of any changes to the information contained in its most recent application.

**4901:2-23-05           Transportation network company permit.**

- (A) Following receipt of a completed application form submitted by an applicant pursuant to rule 4901:2-23-03 of the Administrative Code, the staff shall issue a permit, provided that the applicant:
  - (1) Has affirmed that it will maintain compliance with the applicable requirements established under sections 4925.03 to 4925.08 of the Revised Code and with the rules adopted under this chapter; and
  - (2) Has paid the permit fee in the amount specified under section 4925.02 of the Revised Code.
- (B) A permit issued pursuant to this chapter is effective for one year commencing on the date of issuance.
- (C) No less than thirty days, and no more than sixty days prior to the expiration date of its permit, a transportation network company shall submit a permit renewal application form that is substantially the same as the application form prescribed under rule 4901:2-23-03 of the Administrative Code. Renewal application forms shall be posted on the Commission's website. Following receipt of a completed renewal application form, the staff shall issue a renewed permit provided that the applicant:

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- (1) Has affirmed that it will maintain compliance with the applicable requirements established under sections 4925.03 to 4925.08 of the Revised Code and with the rules adopted under this chapter; and
  - (2) Has paid the permit fee in the amount specified under section 4925.02 of the Revised Code.
- (D) If the staff does not act upon an application submitted pursuant to paragraphs (A) or (C) of this rule, within thirty days of submission, the application shall be deemed automatically approved on the thirty-first day after the official filing date. ~~or~~
- (E) If the staff denies issuance of a permit, or renewal of a permit, for failure of the applicant to meet the requirements of paragraph (A) or (C) of this rule, staff may serve a "letter of staff determination" upon the applicant. The letter shall contain a brief explanation for the denial and instructions regarding the manner in which the applicant may serve a timely request for an administrative hearing to contest the denial. the applicant may file a petition and request for hearing with the commission for the issuance or renewal of the permit.
- (F) Within thirty days following service by staff of a letter of staff determination, the applicant may file a "request for administrative hearing" with the commission's docketing division in order to contest the denial. The request for administrative hearing shall be in writing and shall contain the name, address, and telephone number of the applicant. The request for administrative hearing shall be signed by an authorized representative of the applicant. A copy of the letter of staff determination shall be attached to the request for administrative hearing. All hearings shall be conducted consistent with rule 4901:2-7-16 of the Ohio Administrative Code.
- (EG) If a permit renewal application submitted pursuant to paragraph (C) of this rule is submitted fewer than thirty days prior to the expiration date of the permit, or after the expiration date of the permit, the applicant may file a motion with the commission to extend its previous permit during the pendency of staff's review of the permit renewal application.
- (FH) No transportation network company may transfer its permit to another entity without prior approval from the staff.

**4901:2-23-06            Examinations.**

- (A) Authorized employees of the commission's transportation department may examine

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any records, documents, or property of transportation network companies for the purpose of assessing its compliance with the provisions of sections 4925.03 to 4925.08 of the Revised Code and with the rules adopted under this chapter.

(B) Transportation network companies shall provide authorized employees of the commission's transportation department with reasonably expeditious access to employees, records, documents, or property as necessary to conduct an examination pursuant to paragraph (A) of this rule. Any information sought to be reviewed by the Commission must be accessible and available for review in Ohio, unless otherwise ordered by the Commission.

~~(B)~~(C) Each transportation network company shall maintain all records and data for two years after the date the services are provided that are sufficient to demonstrate compliance with the requirements of sections 4925.03 to 4925.08 of the Revised Code, rules adopted under this chapter, and support any investigation of customer complaints.

**4901:2-23-07                      Standards and proceedings for the suspension or revocation of a transportation network permit.**

- (A) No transportation network company may operate in this state if the commission has suspended or revoked the permit of such transportation network company.
- (B) The commission may, suspend or revoke the permit issued to a transportation network company if the commission determines that the transportation network company:
- (1) Knowingly omitted from, or knowingly provided false information on, an application for a permit.
  - (2) Failed to maintain accurate and current business information with the commission.
  - (3) Failed to maintain compliance with the applicable requirements established under sections 4925.03 to 4925.08 of the Revised Code and with the rules adopted under this chapter.

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- (C) A proceeding to suspend or revoke the permit of a transportation network company shall be initiated by the filing of a staff report recommending the actions to be taken by the commission. The staff report shall be served upon the transportation network company by ordinary or certified United States mail.
- (D) Upon the filing of a staff report as described in paragraph (C) of this rule, the commission shall order the respondent to show cause why the commission should not adopt the staff's recommendations as its order. The order shall require the respondent to file a written answer within fifteen days of the effective date of the order. The order shall be served upon the respondent by ordinary or certified United States mail.
- (E) A respondent upon whom an order described in paragraph (D) of this rule has been served must answer the order to show cause within fifteen days of its effective date. This response shall be in writing and shall contain a detailed statement indicating why the actions recommended by staff may be unjustified, mitigating circumstances or subsequent remedial measures undertaken in regards to the issues raised in the staff report, and any other information relevant to the proposed actions.
- (F) If a respondent fails to answer the order to show cause as described in paragraph (D) of this rule, the commission may issue an order adopting the staff's recommendations and/or issue any other orders the commission deems necessary. If an answer is filed by the respondent, the matter shall be assigned for hearing unless the answer of the respondent is deemed to be satisfactory, in which event the order to show cause may be dismissed. Such hearing shall be conducted in accordance with Chapter 4901-1 of the Administrative Code.