



STATE OF ALABAMA
PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

RASIER, LLC,

Applicant

DOCKET 32779

PERMIT TNC-1

ORDER

BY THE COMMISSION:

By application filed on or about June 12, 2018, Raiser, LLC ("Uber" or "Applicant"), 1455 Market Street, 4th Floor, San Francisco, California 94103, sought authority to operate as a transportation network company ("TNC") in the State of Alabama. The application of Uber was set for hearing on June 14, 2018, pursuant to notice issued on May 29, 2018.¹ The Commission received a timely notice of intervention from the Office of the Attorney General of Alabama ("Attorney General"). A representative of the Attorney General appeared at the hearing on June 14, 2018.

In addition to the application, pursuant to Rule TNC-1(2), Uber requested modification of Rule TNC-3(1)(b) and a temporary exemption from Rule TNC-7. The request for modification relates to a particular requirement for photographs of TNC drivers that appear on the digital network. The request for a temporary exemption concerns the vehicle safety inspection requirement for existing TNC drivers. These requests were addressed at the hearing on June 14, 2018.

Uber's permit application was filed pursuant to Alabama Legislative Act No. 2018-127 ("Act") and the Commission's TNC Rules. The Act created a framework for the statewide regulation of TNCs and TNC drivers, placing these entities under the regulatory jurisdiction of the Commission. The Act

¹ Due to the compressed time schedule necessary to meet the Act's effective date of July 1, 2018, the notice of this permit application hearing was published prior to both the promulgation of the final TNC Rules and the receipt of the permit application.

states that the Commission "shall issue a permit to each applicant that meets the requirements for a TNC under this act." Rule TNC-3 of the Commission's TNC Rules addresses the statutory requirements which must be met in order for the Commission to issue a permit and requires the submission of certain documents in support of these statutory requirements.

Requirements of the Act and Rule TNC-3

Pursuant to the Act and Rule TNC-3, an applicant must satisfy the following criteria in order to receive a TNC permit:

(a) TNC shall disclose to the rider the fare or fare calculation in its digital network. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the rider shall have the option to receive an estimated fare before the beginning of the prearranged ride.

(b) TNC's digital network shall display a picture of the TNC driver, the first name of the TNC driver, and the make, model, and license plate number of the TNC driver's vehicle before the rider enters the TNC vehicle. In the photo of the TNC driver displayed on the digital network, the TNC driver must: be facing directly into the camera; be the only person in the photograph; be clearly identifiable; show full face and top of shoulders; and not be wearing sunglasses or other accessories that prevent clear identification.

(c) Within two hours following the completion of a trip, a TNC shall transmit an electronic receipt to the rider that lists all of the following: the origin and destination of the trip; the total time and distance of the trip; the total fare paid;

and the TNC driver's first name. The receipt transmit period is tolled for any delays in receipt transmission caused by a TNC rider or any delivery system issues beyond the reasonable control of the TNC. An electronic receipt may be sent via electronic mail or made available through the TNC's digital network.

(d) TNC shall complete all of the required statutory checks before allowing an individual to accept trip requests through that TNC's digital network as a driver. After allowing an individual to accept trip requests through that TNC's digital network as a driver, a TNC shall annually screen drivers for compliance with the requirements in Section 10 of the Act.

(e) TNC shall establish and enforce a zero tolerance intoxicating substance policy for TNC drivers that prohibits any amount of intoxication of the driver while providing transportation network services.

(f) TNC shall include on its website, in a prominent location, a notice concerning the TNC's zero tolerance intoxicating substance policy and the means to make a complaint about a suspected violation of the policy.

(g) Upon receipt of a rider complaint alleging a violation of the zero tolerance intoxicating substance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital network and conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(h) The TNC's zero tolerance intoxicating substance policy shall include a description of the corrective measures to be taken against a TNC driver if the

TNC confirms that the TNC driver has violated the terms of the zero tolerance intoxicating substance policy.

(i) The TNC shall adopt a policy of nondiscrimination against riders or potential riders who are protected by Title 7, Civil Rights Act of 1964, 42 U.S.C. 2000e. et. seq. or the Americans With Disabilities Act of 1990. TNC may not impose additional charges for providing services to individuals with physical disabilities because of those disabilities.

(j) TNC shall maintain an agent for service of process in the State.

(k) TNC shall maintain records as required by the Act.

In addition, an applicant shall submit the following items with its application:

- (a) Application fee of \$700
- (b) Articles of Incorporation or Articles of Organization
- (c) Nondiscrimination Policy
- (d) Zero Tolerance Intoxicating Substance Policy
- (e) Illustration of TNC's trade dress
- (f) Method that TNC will use to calculate customer fares
- (g) TNC's Record Retention Policy
- (h) TNC policy regarding periodic checks of TNC drivers to ensure that the TNC drivers using its digital network continue to meet the initial standards for TNC drivers described in the Act
- (i) Certificate of Insurance

- (j) TNC's procedures for responding to requests from law enforcement
- (k) Name of agent for service of process in the state
- (l) Copy of TNC Vehicle Safety Inspection Form

Uber's Permit Application and Hearing Testimony

Uber submitted its permit application on or about June 12, 2018.² In its permit application, an authorized representative for Uber provided a sworn statement that Uber will comply with all of the statutory requirements, as described in the above list. At the hearing, the representative for Uber confirmed that the affiant on the permit application has the authority to approve policy statements for Uber. The Uber representative testified that the policy documents included in the application, which were screen-shots from Uber's website, are in fact the official policy documents of Uber. These policy documents included the non-discrimination policy; the zero tolerance intoxicating substance policy; the records retention policy; and the policy regarding periodic checks of its drivers.

Further addressing the zero tolerance intoxicating substance policy, the representative for Uber testified that her company "does not tolerate the use of any drugs or alcohol by [its drivers] while they are providing services," adding that a driver will permanently lose access to the platform upon the verification of a complaint of alcohol or drug use while driving for Uber. The Applicant's representative explained that an Uber driver would be temporarily suspended from using the platform while such a complaint is being investigated. The representative for Uber asserted that the notice of the policy and the means to make such a complaint are displayed in a prominent location on Uber's webpage.

² The permit application was submitted by Raiser, LLC, without listing Uber as the name that it is doing business as in Alabama. At the hearing, the representative for Uber asserted that its agreements with the TNC drivers are entered into under the name of Raiser, LLC. Despite this, the Commission finds it appropriate to refer to Raiser, LLC as "Uber" because the general public recognizes its TNC service as Uber, the name on its trade dress.

The representative for Uber also explained how her company discloses fares to riders through its digital network; how Uber would ensure that its drivers display the correct trade dress; and how it sends trip receipts to TNC riders. The Applicant's representative briefly described the TNC insurance requirements listed in Alabama Code Chapter 32-7C and, upon request, submitted insurance certificates to support Uber's compliance with those requirements. The representative of Uber testified that her company would complete all of the required statutory checks before allowing an individual to accept trip requests through Uber's digital network. In describing how Uber complies with the driver background check requirements of the Act and the Commission's Rules, the representative of the Applicant testified that Uber uses a multi-jurisdictional database, Social Security trace, and a third party background check provider that utilizes runners that physically visit local courthouses to obtain records.

In its application, Uber submitted all documents required by the Commission's TNC Rules.

Request for Modification of Rule TNC-3(1)(b)

Uber requested the modification of Rule TNC-3(1)(b) to remove the requirement that the photograph show the driver's "top of shoulders," stating that modifying its systems for this requirement would be "unduly burdensome relative to the benefit provided by its inclusion in the Rule." Uber explained that its digital network displays driver photographs in a circle and that the "tops of the shoulders" may not appear in the displayed picture. Uber asserts that the other requirements of the Rule TNC-3, which are consistent with Uber's existing instructions to drivers, are adequate to ensure that a rider can clearly identify the matched Uber driver.

At the hearing, the representative for Uber further explained the reason for the requested modification, indicating that "a lot of engineering resources go into building the app," which is used globally, and it is not something that "can easily be modified to kind of fit a specific local rule." The Applicant's representative also asserted that Uber's current internal requirements ensure that riders can

recognize the assigned Uber driver, stating that Uber currently requires that the driver photograph show "both eyes, corner of the mouth, and both ears" which ensures that the photograph is taken from a distance that allows for facial recognition.

It appears that Uber's internal requirements address the Commission's concerns regarding the ability of a TNC rider to recognize a TNC driver through the photograph on its digital network. However, given that this is a new regulatory area, the Commission finds that a temporary exemption is more appropriate than a rule modification at this time. Therefore, the Commission grants Uber a temporary exemption from the requirement of Rule TNC-3(1)(b) that the photograph show the driver's "top of shoulders." This temporary exemption shall expire on July 1, 2019. At that time, Uber may petition for a further exemption or for modification of the rule.

Request for Temporary Exemption from Rule TNC-7

Uber requested a temporary exemption from Rule TNC-7 which requires a vehicle inspection as a prerequisite for providing TNC service. Specifically, Uber requested a six month exemption for "any TNC driver who began providing TNC services within the state of Alabama prior to July 1, 2018 and who completed a safety inspection in compliance with the ordinance requirements of the relevant municipality or municipalities in which he or she provided TNC services that were in effect prior to the July 1, 2018." Uber contends that requiring these TNC drivers to complete a new safety inspection within a very short time period would be overly burdensome for existing TNC drivers. Uber added that the vehicle safety inspections completed pursuant to the municipal ordinances differ "only marginally" from the requirements of Rule TNC-7.

At the hearing, the representative for Uber further explained the reason for the requested exemption, stating that this request "is really designed to minimize the burden on those drivers who have recently completed a safety inspection because of ordinance requirements." The Applicant's

representative indicated that the municipal vehicle inspection requirements vary from city to city but are "very similar" to the Commission's vehicle inspection requirements, noting that the main difference was that the Commission's vehicle inspection added a check for functioning heat and air conditioning. The Uber representative confirmed that this requested exemption would not apply to any driver that does not have a vehicle safety inspection on file.

The Applicant has reasonable concerns regarding the burden placed on current Uber drivers who have recently completed a vehicle safety inspection to satisfy the requirements of a municipal ordinance. The Commission recognizes that the vehicle safety forms used to comply with these municipal ordinances include checks that are very similar to the safety checks required by the Commission's TNC Rules. Therefore, the Commission grants Uber a six month exemption from Rule TNC-7 for any TNC driver who began providing TNC services within the state of Alabama prior to July 1, 2018 and who completed a safety inspection in compliance with the ordinance requirements of the relevant municipality or municipalities in which he or she provided TNC services that were in effect prior to the July 1, 2018.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That Transportation Network Company Permit 1 (Permit TNC-1) is hereby issued to Raiser, LLC, 1455 Market Street, 4th Floor, San Francisco, California 94103, authorizing operations as a TNC in the State of Alabama.

IT IS FURTHER ORDERED BY THE COMMISSION, That Uber shall notify the Commission and its drivers within thirty (30) days of any changes to its policies that are required by this Act or the TNC Rules.

IT IS FURTHER ORDERED BY THE COMMISSION, That Uber is granted a temporary exemption from the requirement of Rule TNC-3(1)(b) that the photograph show the driver's "top of shoulders." This temporary exemption shall expire on July 1, 2019.

IT IS FURTHER ORDERED BY THE COMMISSION, That Uber is granted a temporary exemption from Rule TNC-7 for any TNC driver who began providing TNC services within the state of Alabama prior to July 1, 2018 and who completed a safety inspection in compliance with the ordinance requirements of the relevant municipality or municipalities in which he or she provided TNC services that were in effect prior to the July 1, 2018. This temporary exemption shall expire on January 1, 2019.

IT IS FURTHER ORDERED BY THE COMMISSION, That the operations herein authorized shall be subject to all the rights, privileges and immunities as well as all the restrictions, liabilities and responsibilities that are now or may hereafter be imposed by law or the rules and regulations of this Commission upon TNCs.

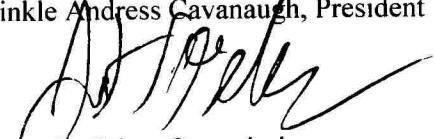
IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premise.

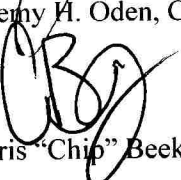
IT IS FURTHER ORDERED, That this Order shall be effective as of July 1, 2018.

DONE at Montgomery, Alabama, this 28th day of June, 2018.

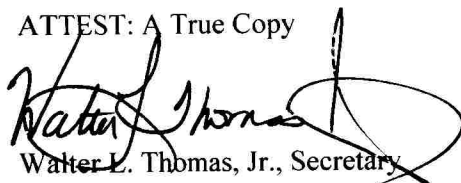
ALABAMA PUBLIC SERVICE COMMISSION


Twinkle Andress Cavanaugh, President


Jeremy H. Oden, Commissioner


Chris "Chip" Beeker, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary