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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**ASSIGNED COMMISSIONER'S RULING INVITING/INSTRUCTING PARTY
COMMENTS ON BACKGROUND CHECKS OF PROSPECTIVE
TRANSPORTATION NETWORK COMPANY DRIVERS**

In opening Rulemaking 12-12-011, the Commission expressed its intent “to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these [Transportation Network Companies (TNCs)].” As one of the Commission’s goals is to ensure that the services of a regulated utility is provided in safe manner, this Commission continues to consider what are the appropriate background checks that should be incumbent on each licensed TNC to conduct on each TNC driver before the TNC driver is permitted to transport a TNC subscribing customer. To that end, as the assigned Commissioner, I have previously invited the parties to comment on whether the current TNC background check programs are thorough enough to give this Commission, as well as the public, a sufficient level of confidence that a comprehensive background check is being undertaken before each TNC driver is permitted to provide the TNC service.

Thus far, and not surprisingly, the parties’ responses have not been uniform. While all responders are in agreement that the safety of TNC passengers is of paramount importance, they disagree not only on whether the current TNC driver background checks are sufficiently rigorous, but also on whether each TNC driver should be fingerprinted and run through the existing criminal background data bases. This disagreement amongst the parties appears to widen each time an anecdotal bit of information comes to light about a TNC driver who is involved in, or who is alleged to be the cause of, a life

threatening or fatal incident. As a result of the ever-changing landscape of information, I believe that it is prudent that the Commission continue to explore whether each TNC's current method of conducting criminal background checks before hiring a TNC driver is as effective as fingerprint-based criminal background checks that are conducted by other business operations. I am also interested in gathering concrete information regarding the potential benefits and/or possible harms if the Commission were to require all prospective TNC drivers to undergo a fingerprint-based background check.

Finally, given the national importance of TNC background checks, and to assist the Commission in ascertaining a broader sense of public opinion, I am interested in hearing from members of the public who are not parties to this proceeding. I have created a process for submitting e-comments to the Commission's Public Advisor's Office. The Commission will consider the e-comments in its decision-making process.

In order to submit an e-comment, please click this link and follow the instructions: <http://www.cpuc.ca.gov/webform.aspx?ekfrm=11394>.

A. Questions that all parties are invited to address

1. What are the specifics of a fingerprint-based background check performed through the California Department of Justice (CA DOJ), and what are the comparable specifics of the process currently used by the TNCs?
 - a. Which databases does each form of background check use, and what are the pros and cons of each database, such as frequency of updates, the time between a conviction and when it posts to the background check service provider's database(s), reliance on local law enforcement, and false positives?
 - b. Provide a chart that lists each county in California and the databases that the respective background check service provider checks for each county, including the following information for each database, as applicable:
 - i. The source of the data, the name of the database used, and a brief description of the data included in the database.
 - ii. The date range of the oldest data and the most recent data included.
 - iii. How often the information is updated.

- iv. How the background check service provider checks the databases (by name, social security number, fingerprints, etc.).
 - v. A list of the counties for which no data is available.
 - c. How does the existing TNC criminal background check process specifically verify that the identity of a driver applicant is the same as purported by the applicant?
 - d. How does the existing TNC criminal background check process account for drivers who submit aliases or false SSNs?
 - e. Compare timelines between the process conducted by TNCs today and a fingerprint-based background check performed through CA DOJ.
 - f. Under the process used by TNCs today, what empirical evidence exists, if any, that driver applicants will be approved despite having a disqualifying criminal record due to a failure to transmit this criminal record to/from the relevant database?
 - g. Under the fingerprint-based CA DOJ process, what empirical evidence exists of the same risk set out in (f)?
2. Describe any alternative background check methods aside from fingerprinting and social security number (SSN) tracking that establish a driver's identity.
3. What empirical evidence demonstrates the effectiveness or ineffectiveness of fingerprint-based background checks and SSN-based background checks to establish applicant identity and produce a lawful, accurate record of the applicant's criminal history?
4. Should individuals who apply to drive for more than one TNC be required to undergo multiple background checks?
 - a. What is the feasibility of driver applicants submitting a single background check to work for multiple TNCs?
5. Who should bear the costs of a fingerprint-based background check?
6. Are LiveScan sites readily accessible to potential drivers in urban and rural areas of California?
7. What are the criteria beyond those set forth by the Commission in Decision 13-09-045, if any, for a TNC to reject an applicant to become a TNC driver based on the information contained in their background check?

- a. Are potential drivers notified if they failed their background check?
 - i. If so, how much detail are they provided about the reasons for their rejection?
 - ii. If so, are drivers able to appeal the rejection?
 - b. What are the criteria, if any, for waiving or disregarding a normally-disqualifying criminal record?
 - i. Is there a process for an applicant to request a waiver under these criteria?
 - ii. In what form (website, individual e-mail, meeting, etc.) is the process communicated to the applicant?
8. Do fingerprint-background checks return results on arrests and/or final dispositions (e.g., convictions)?
- a. If arrests are returned without corresponding final dispositions in background check results, can they be relied upon to reject a driver?
 - b. If arrests may be relied upon to reject drivers, who bears the burden to demonstrate that an arrest did not lead to a conviction?
9. Would requiring fingerprint-based background checks have a disparate impact on minority communities such as African-Americans or Latinos who are seeking to become TNC drivers? If so, explain your response and provide any available statistical data on the rate that African-Americans, Latinos, Whites and Asians are rejected due to fingerprint based background checks.
10. For TNCs that currently use it, if a fingerprint-based background check turns up potentially disqualifying information about a TNC driver applicant, does the TNC conduct a further review of the applicant to determine if there are some mitigating factors or other information that should be taken into account before deciding to accept/reject an applicant? If so, describe that process.
11. If a SSN-based background check turns up potentially disqualifying information about a TNC driver applicant, does the TNC conduct a further review of the applicant to determine if there are some mitigating factors or other

information that should be taken into account before deciding to accept/reject an applicant? If so, describe that process.

12. Where a taxi company or licensed Transportation Charter Party (TCP) or Passenger Stage Corporation (PSC) has hiring practices in place that are responsive to Questions 7-11, please describe.
13. Would subjecting all prospective TNC drivers to a fingerprint-based background check violate any state statute, federal statute, decisional law, policy, order, rule, or directive? If so identify every such state statute, federal statute, decisional law, policy, order, rule, or directive and explain how a fingerprint-based background check would result in a violation.
14. What would be the benefit(s), if any, in requiring all prospective TNC drivers to undergo a fingerprint-based background check?
15. Does the Commission have the authority to review records collected by a third party office other than the CA DOJ? Public Utilities Code Section 308.5 allows designated peace officers the right to see Department of Justice state summary criminal history information. Does this authority extend to third party collected criminal background checks?

B. Questions that each TNC licensed in California is instructed to answer

1. For 2014, how many persons applied to be a TNC driver in California with your company?
2. For 2014, how many of the persons who applied to be a TNC driver in California with your company were subjected to a fingerprint-based background check?
3. For 2014, how many of the persons who applied to be a TNC driver in California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
4. For the applicants who were rejected as a TNC driver in California in 2014, how many were:
 - a. African-American?

- b. Latino?
 - c. White?
 - d. Asian? or
 - e. Another racial or ethnic group?
5. For 2015, how many persons applied to be a TNC driver in California with your company?
 6. For 2015, how many of the persons who applied to be a TNC driver in California with your company were subjected to a fingerprint-based background check?
 7. For 2015, how many of the persons who applied to be a TNC driver in California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
 8. For the applicants who were rejected as a TNC driver in California in 2015, how many were African-American, Latino, White, Asian, or of another racial or ethnic group?
 9. From January 1, 2016 through May 31, 2016, how many persons applied to be a TNC driver in California with your company?
 10. From January 1, 2016 through May 31, 2016, how many of the persons who applied to be a TNC driver in California with your company were subjected to a fingerprint-based background check?
 11. From January 1, 2016 through May 31, 2016, how many of the persons who applied to be a TNC driver in California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
 12. For the applicants who were rejected as a TNC driver in California between January 1, 2016 and May 31, 2016, how many were African-American, Latino, White, Asian, or of another racial or ethnic group?
 13. Identify all other jurisdictions outside of California where you conduct a fingerprint-based background check before accepting an applicant to be a TNC driver.

C. Questions that each TNC licensed in a state other than California is instructed to answer

1. For 2014, how many persons applied to be a TNC driver in states other than California with your company?
2. For 2014, how many of the persons who applied to be a TNC driver in states other than California with your company were subjected to a fingerprint-based background check?
3. For 2014, how many of the persons who applied to be a TNC driver in states other than California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
4. For the applicants who were rejected as a TNC driver in states other than California in 2014, how many were African-American, Latino, White, Asian, or of another racial or ethnic group?
5. For 2015, how many persons applied to be a TNC driver in states other than California with your company?
6. For 2015, how many of the persons who applied to be a TNC driver in states other than California with your company were subjected to a fingerprint-based background check?
7. For 2015, how many of the persons who applied to be a TNC driver in states other than California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
8. For the applicants who were rejected as a TNC driver in states other than California in 2015, how many were African-American, Latino, White, Asian, or of another racial or ethnic group?
9. From January 1, 2016 through May 31, 2016, how many persons applied to be a TNC driver in states other than California with your company?
10. From January 1, 2016 through May 31, 2016, how many of the persons who applied to be a TNC driver in states other than California with your company were subjected to a fingerprint-based background check?

11. From January 1, 2016 through May 31, 2016, how many of the persons who applied to be a TNC driver in states other than California and were subjected to a fingerprint-based background check were rejected as a TNC driver as a result of information learned from the fingerprint-based background check?
12. For the applicants who were rejected as a TNC driver in states other than California between January 1, 2016 and May 31, 2016, how many were African-American, Latino, White, Asian, or of another racial or ethnic group?

Opening Comments shall be filed and served by July 18, 2016.

Reply Comments shall be filed and served by August 1, 2016.

IT IS SO RULED.

Dated June 22, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner