

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**
10-04-17
03:12 PM

October 4, 2017

Agenda ID #16025
Quasi-legislative

TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Liane M. Randolph. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 9, 2017 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON

Anne E. Simon

Acting Chief Administrative Law Judge

AES:lil

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER RANDOLPH**
(Mailed 10/4/2017)

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

**PROPOSED DECISION ON PHASE III. B. ISSUE: CRIMINAL BACKGROUND
CHECKS FOR TRANSPORTATION NETWORK COMPANY DRIVERS**

Table of Contents

<u>Title</u>	<u>Page</u>
PROPOSED DECISION ON PHASE III. B. ISSUE: CRIMINAL BACKGROUND CHECKS FOR TRANSPORTATION NETWORK COMPANY DRIVERS.....	1
Summary	2
1. Background.....	3
1.1. The Order Instituting Rulemaking	3
1.2. The June 26, 2016 Assigned Commissioner’s Ruling.....	5
1.3. Phase III.B. Scoping Memo and Ruling	5
1.4. The TNC Background-Checking Process.....	7
1.5. Biometric Background Checks Performed by the California Department of Justice.....	14
1.6. Assembly Bill 2189 and the Commission’s Authority to Interpret, Enforce, and Adopt Additional Background Requirements	17
2. Discussion.....	20
2.1. Question 1: What Public Policy and or Safety Objectives Would be Achieved by Requiring All Existing and Prospective TNC Drivers to Undergo a Biometric (i.e. the Use of a Person’s Physical Characteristics and Other Traits) Background Check?	20
2.1.1. Party Comments	20
2.1.2. Discussion.....	23
2.2. Question 2: Does Subjecting All TNC Drivers to a Biometric Background Check Adversely Affect the Chances of Persons of Different Races or Ethnicities to Pass the Background-Checking Process?.....	24
2.2.1. Party Comments	24
2.2.2. Discussion.....	26
2.3. Question 3: In Addition to a Biometric Background Check, Are There Other Background Check Protocols that the Commission Should Consider Adopting?.....	26
2.3.1. Comments.....	26
2.3.2. Discussion.....	28
3. Comments on Proposed Decision.....	29
4. Assignment of Proceeding.....	30
Findings of Fact.....	30
Conclusions of Law.....	30
ORDER	32

PROPOSED DECISION ON PHASE III. B. ISSUE: CRIMINAL BACKGROUND CHECKS FOR TRANSPORTATION NETWORK COMPANY DRIVERS**Summary**

In Decision 13-09-045, the Commission formulated background-check requirements that harmonized the goal of public safety with the public demand for the then nascent Transportation Network Company (TNCs or TNC) services. The Commission has revisited the issue in subsequent phases of this proceeding as more information regarding the TNC industry has become available.

The California Legislature has also weighed in and established background checks that TNCs must undertake. With the enactment of Assembly Bill (AB) 1289, codified in Pub. Util. Code § 5445.2, TNCs are required to adhere to a three-part background protocol. Yet in passing AB 1289, the Legislature made it clear that its requirements were not exhaustive standards, and that the Commission maintained the authority to adopt additional standards that did not conflict with the Legislature's directive.

As such, any TNC that wishes to conduct transportation service in California must meet the requirements of Pub. Util. Code § 5445.2, which we set forth as follows:

- A TNC or a third party working on the TNC's behalf must perform a search of a multistate and multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation; and conduct a search of the United States Department of Justice National Sex Offender Public Web site.
- A TNC may not contract with, employ, or retain persons currently registered on the Department of Justice National Sex Offender Public Web site; or convicted of either a violent felony or a violation of Penal Code §§ 11413, 11418, 11418.5, or 11419.
- A TNC may not contract with, employ, or retain persons convicted of any of the following offenses within the previous seven years: misdemeanor assault or battery; domestic violence offense; driving under the influence of alcohol or drugs; a felony violation of Elections Code § 18540, or Penal Code §§ 67, 68, 85, 86, 92, 93, 137, 138, 165, 518, 530, 18500, 484, 487(a), or 25540(b).

In addition to the requirements set forth in Pub. Util. Code § 5445.2, the Commission exercises its regulatory authority to require every licensed TNC to comply with the following additional requirements:

First, commercial background check companies that a TNC employs must be accredited by the National Association of Professional Background Screener's Background Screening Credentialing Council. If a TNC conducts background checks in-house, the TNC must itself be accredited by the same entity.

Second, each TNC must receive proof of accreditation of the background check company and provide proof of accreditation with any reporting that the Commission may require.

Third, the background screening for each TNC driver must be conducted prior to the granting of authorization to operate on the TNC's platform and repeated at least once per year thereafter, for as long as the TNC driver is authorized to operate on the TNC's platform. The TNC must provide proof of annual screening of its drivers with any reporting that the Commission may require.

Fourth, we limit the information a TNC can require from a background check to those disqualifying categories of offenses and convictions set forth in Pub. Util. Code § 5445.2.

Finally, the Commission declines to require a TNC that does not primarily transport minors to conduct a biometric (i.e., the use of a person's physical characteristics and other traits) background check of a TNC driver.

This proceeding remains open.

1. Background

1.1. The Order Instituting Rulemaking

Since initiating this proceeding to establish regulations over the then nascent Transportation Network Company (TNCs or TNC) industry, the Commission has sought to formulate the appropriate level of background-check regulations that each TNC should

perform on its drivers. In confronting this issue, the Commission has sought to balance the need to adopt regulations that promote the public safety aspects of the TNC industry, yet not obstruct the public's demand for this new mode of transportation.

Pursuant to Ordering Paragraph 19 of Decision (D.) 16-04-041, the Scoping Memo and Ruling dated October 26, 2016, and later amended on June 12, 2017, opened a Phase III in this proceeding. The purpose behind Phase III was to explore those issues that were unresolved in Phases I and II, and to consider how best to address the advent of new issues attendant to the provision of Transportation Network Company (TNC) services in order to maintain the safety of TNC passengers and TNC drivers, as well as other drivers or pedestrians who may come in contact with TNC drivers. This rulemaking has sought and received comments from the parties, and has welcomed comments from the public that were either made at Commission public meetings or provided in writing to the Commission's Public Advisor's Office.

Because the Commission wanted to expand the opportunities for the public to express their opinions on the background check issue and as part of its commitment to increasing the public's involvement in its proceedings, the Commission implemented an online platform whereby the public could participate in a survey and voice their opinions on whether the Commission should require TNCs to conduct a biometric background check of current and prospective TNC drivers. Since June of 2016, the Commission has received a total of 1,817 comments on whether TNC drivers should be subject to fingerprinting as part of the background check, and the breakdown of the responses is as follows:

Yes	No	It depends	Undecided
879	897	34	7
48.38%	49.37%	1.87%	.039%

The survey respondents appear to be evenly divided on fingerprinting TNC drivers, and so no matter how the Commission resolves the question, many persons who

responded to the survey may not be satisfied with the Commission's ultimate decision. Despite this apparent split of opinion, the Commission must base its decision on background checks with the goal of promoting public safety.

1.2. The June 26, 2016 Assigned Commissioner's Ruling

As the Commission continues to develop regulations for the TNC industry, one unresolved question is what background checks the Commission should require permitted TNCs that do not primarily transport minors¹ to perform on both their existing and prospective drivers. Previously, on June 22, 2016, the Assigned Commissioner issued her *Ruling Inviting/Instructing Party Comments on Background Checks of Prospective Transportation Network Company Drivers*. On August 29, 2016, the following parties filed opening comments: HopSkipDrive, Tech Net, San Francisco International Airport (SFO) and San Francisco Metropolitan Transportation Agency (SFIA/SFMTA), California Chamber of Commerce, the Greenlining Institute, CAL Innovates, Internet Association, Rasier-CA, LLC (Rasier-CA or Rasier),² Engine, Lyft, Inc. (Lyft) and the San Francisco Taxi Workers Alliance (SFTWA).

1.3. Phase III.B. Scoping Memo and Ruling

The background-check inquiry was further refined in the April 7, 2017 *Phase III.B. Scoping Memo and Ruling (Scoping Memo and Ruling)* in which the parties were invited to address additional background-check questions in light of the California Legislature's passage of Assembly Bill (AB) 1289, discussed *infra*, which established both minimum background-check protocols for TNCs, and set forth certain factors that would disqualify a person from being a TNC driver. On May 1, 2017, the following

¹ In D.16-04-041, Ordering Paragraph 6, this Commission ordered that all carriers, including TNCs, that primarily transport unaccompanied minors must comply, at a minimum, with the background check requirements articulated by this Commission in D.97-07-063.

² This decision refers to Rasier which is recognized by the public as Uber.

parties filed opening comments: Rasier-CA, Lyft, SFIA/SFMTA, SFTWA, and the Los Angeles Department of Transportation (LADOT).

With the advent of the TNC business, California and other states have grappled with the question of whether biometrics should be utilized as part of the background-checking process for TNC drivers.³ As we will demonstrate, the positions of the parties fall into one of two camps—those favoring the inclusion of a biometric component as part of the background check; and those, usually the TNCs, who favor alternative background checks that do not include the biometric component and instead require a search through local, multi-state, and or multi-national criminal records databases.⁴

While the approaches may appear different on the surface, they both attempt to accomplish the goal of conducting a comprehensive criminal history check. This conclusion was also recently reached by the Public Service Commission (PSC) of Maryland. In its December 22, 2016 *Order In the Matter of the Petitions of Rasier, LLC and Lyft, Inc. For Waiver of Public Utilities Article Section 10-104(B) (Maryland Order)*, the Maryland PSC found that while no one background check process was perfect, the

³ As of 2016, two states have either passed legislation, or are considering legislation, requiring that fingerprinting be included as part of the background checks of TNC drivers: Maryland (PUA § 10-104(b); the law also gives a TNC the right to file a petition to waive the fingerprint-based background check [PUA § 10-404(e)(2)(ii)]); and Massachusetts introduced a bill in 2015 that would require fingerprinting. 18 states have either passed, or are considering, background check requirements that do not require fingerprinting: Arizona (Chapter 235, House Bill 21350, Colorado (Session Laws of Colorado), District of Columbia (DC Council Bill B20-0753), Georgia (House Bill 225), Illinois (SB 2774), Indiana (House Enrolled Act 1278), Nebraska (LB 629), Nevada (AB 175), New Mexico (HB 168), North Carolina (Session Law 2015-237), North Dakota (HB 1144), Ohio (HB 237), Oklahoma (HB 1614), South Carolina (H.3525), Tennessee (HB 992), Virginia (H. 1662), West Virginia (considering HB 4228), and Wisconsin (AB 143). Pursuant to Rule 13.9 and Evidence Code § 452, the Commission takes official notice of these legislative acts. A discussion of these various laws can be found in *States Address Background Checks for Rideshare Drivers*. Sean Slone February 24, 2016. The Council of State Governments.

⁴ As noted above, the split of positions between the parties on the on whether to require fingerprinting is similar to the split of public survey opinions provided to the Commission through its online comment form.

Rasier and Lyft background check processes were “as comprehensive and accurate as the fingerprint-based background check process under PUA § 10-104(b).”⁵

Before discussing the questions, the Scoping Memo and Ruling asked the parties to address, it will be helpful to set forth information regarding biometric background checks that California’s Department of Justice (DOJ) performs, and the non-biometric background checks that TNCs such as Rasier-CA and Lyft perform. That way, the Commission can determine (1) if the current TNC background checks comply with Pub. Util. Code § 5445.2; and (2) if the California Department of Justice’s biometric background-check process adds an increased component of safety that the Commission should consider adopting.

1.4. The TNC Background-Checking Process

In Ordering Paragraph 4 of D.13-09-045, the Commission ordered each TNC to conduct a criminal background check, using the name and social security number for each driver prior to that applicant becoming a TNC driver. We ordered that the background check be conducted on a national basis and include the national sex offender database. We also articulated certain felony criminal convictions within seven years prior to the date of the background check that would make an applicant ineligible to be a TNC driver.

In setting forth this background check requirement, the Commission declined to dictate how the process would be carried out (*i.e.* would the TNC conduct the check itself or contract with a third-party service), nor did we set forth eligibility criteria for the use of third-party background checking services. Instead, as part of the TNC application process, we required each TNC to describe its background check requirements, and required each TNC applicant using a background check company to submit a signed

⁵ *Maryland Order* at 19. Pursuant to Rule 13.9 and Evidence Code § 452, the Commission takes official notice of the *Maryland Order*.

contract with that background check company.⁶ The Commission's Transportation Enforcement Branch (TEB) reviews each TNC's background check process to ensure each TNC is in compliance with the Commission's orders before receiving a permit to operate in California. The continued growth in the TNC industry, as well as the recent legislative mandate, have made it necessary that the Commission take a fresh look at each TNC's processes in order to determine if each permitted TNC is in compliance with Pub. Util. Code § 5445.2 and decide if additional background check requirements should be imposed.

Since allowing TNCs to operate in California, the Commission has issued permits to 13 TNCs that do not primarily transport minors: Ainos dba Witz, Altruistic, Inc. dba Bounce, Executive Ride, Quickie Technologies, Inc., Rasier-CA, Ride Plus, LLC, See Jane Go, Inc., Lyft, Silver Ride, LLC, Sitbaq, Inc., Social Drv, and Wingz. In addition, the Commission has issued permits to three TNCs that primarily transport minors: Kanga Do; Hop, Skip and Drive, and Zum. As part of the comment process, we have invited all parties to discuss the background-check issue, and to specifically opine on whether fingerprinting should be part of the checking process. Not all TNCs filed comments so the current state of the record does not permit the Commission to determine if all TNCs are in compliance with the newly enacted statutory background check requirements. As set forth in Ordering Paragraph 2, each licensed TNC will be required to file and serve a declaration in this proceeding attesting to how it complies with Pub. Util. Code § 5445.2 as well as the additional requirements adopted by this decision. The assigned Commissioner, the assigned Administrative Law Judge, and the Commission's TEB will have the discretion to determine if any follow-up inquiries are warranted regarding a TNC's background check program. New TNCs pursuing licensing after the effective

6

http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/TNC%20Application%20Packet_Oct%202016.pdf.

date of this decision must include a similar attestation as part of their applications to the Commission's License Section.

While not every TNC filed comments regarding the current background check requirements, Rasier-CA and Lyft filed extensive comments on August 29, 2016 (which were later referenced in their comments filed on May 1, 2017)⁷ regarding how they conduct their background checks of TNC drivers. We have chosen to take a closer look at the responses of these two TNCs, who comprise the majority of the TNC business market in California.⁸ In doing so, the Commission can ascertain if the majority of TNC patrons are being transported by drivers whose backgrounds have undergone the screening scrutiny that California now requires. We can then compare the processes that Rasier-CA and Lyft utilize with the biometric background check program that the DOJ utilizes to determine if the Commission should add a biometric component to the background-checking process for all TNC drivers.

Rasier-CA and Lyft

Rasier-CA and Lyft perform similar background checks to identify drivers, search for personal information, and verify information accuracy, through contracting with the background check companies Checkr (Rasier-CA) and Sterling Talent Solutions (Lyft).⁹

⁷ Lyft's May 1, 2017 Comments at 13 and footnote 29; *See* Rasier-CA's May 1, 2017 Comments at 8-9.

⁸ We base this assessment of Rasier-CA and Lyft's market share based on the ride data provided to the Commission's Transportation and Enforcement Branch.

⁹ Lyft's May 1, 2016 Comments at 17; and supporting Declaration of Kelly Kay (Kay Dec.) at 1, ¶ 3; Rasier-CA's May 1, 2016 Comments at 6; and supporting Declaration of Jared Callahan (Callahan Dec.), ¶ 5. Checkr and Sterling are credit reporting agencies (CRAs) audited and accredited by the Background Screening Credentialing Council (BSCC) of the National Association of Professional Background Screeners (NAPBS). (Rasier-CA's May 1, 2017 Comments at 5, footnote 6, and 9; Callahan Dec. at ¶ 8; *Maryland Order* at 7, footnote 33; and 9-10, footnote 49. To pass an audit, a credit reporting agency must demonstrate continued compliance with a comprehensive set of accreditation standards, including (1) maintaining auditing procedures for quality assurance in regard to its active public record researchers; (2) maintaining procedures to assure maximum possible accuracy when determining the identity of an individual who is the subject of a record prior to reporting the information; (3) designating a qualified individual(s) or position(s) within the organization responsible for understanding court terminology, as well as understanding the various jurisdictional court differences; and (4) having procedures in place to

Footnote continued on next page

The companies generally follow the following processes:

Step 1: Identify. TNC applications require prospective drivers to provide a basic set of personal data points, such as full name, photo, social security number, driver's license number, date of birth, address, phone number, insurance information and vehicle information.¹⁰

Step 2: Search. Background check companies utilize application data to search for additional records associated with the driver-applicant.¹¹

- a. **Credit Check.** Sterling and Checkr utilize the applicant's name and Social Security number to obtain and review reports compiled by major credit bureaus to search for an applicant's other names and aliases, SSN, known addresses and periods of residence. The background checkers search for other data points if publicly available, such as property deeds, US Postal records or mail forwarding service, utility bills, voter's registration, and birth or death master files.¹²
- b. **Photos.** Background companies also confirm an applicant's identity by comparing a current photo, typically a "selfie," against the current driver license photo.¹³
- c. **Department of Motor Vehicle's (DMV's) Employer Pull Notice Program.** The California Public Utilities Commission (CPUC or Commission) requires TNCs to enroll in the DMV's Employer Pull Notice program, which permits the TNCs to review and receive close-in-time updates on a driver's driving records.¹⁴
- d. **Database searches.** Both companies state they check publicly-available databases, which include:

ensure the accuracy and quality of all work product. (See NAPBS Background Screening Agency Accreditation Program: CRA Accreditation Standard with Audit Criteria (February 16, 2009) located at www.napbs.com. The criteria are also cited in the *Maryland Order* at 7, footnote 33; and 9-10, footnote 49.

¹⁰ Callahan Dec. at ¶ 10; Kay Dec. at ¶ 4.

¹¹ Callahan Dec. at ¶ 9; Kay Dec. at ¶ 5.

¹² Callahan Dec. at ¶¶ 11-13; Kay Dec. at ¶ 8.

¹³ Rasier-CA's Comments at 17; see Lyft's Comments at 21.

¹⁴ Rasier-CA's Comments at 7 and footnote 23. Pub. Util. Code § 5444 requires TNCs to participate in the Pull-Notice System.

- U.S. Department of Justice Sex Offender Registry.¹⁵
- Interpol; Federal Bureau of Investigation (FBI) Terrorist Watch list; and Public Access to Court Electronic Records, a database maintained by the federal court system, which provides case records and outcomes from the 94 federal district courts.¹⁶

Step 3: Investigation. Many cities and counties make criminal records available to the public. Checkr and Sterling utilize an applicant's geographic locations to search for electronic and paper criminal records, and compile a list of offenses. Rasier states its background checks search approximately 1500 national, state and local criminal databases that make such information public.¹⁷

Lyft utilizes three proprietary databases compiled by private companies:

- Social Security Number Trace database that contains hundreds of sources to locate known addresses, including information from all credit bureaus, property deeds/mortgages, U.S. Postal forwarding service and other public sources, e.g., voter registration. That screen provides locational data to determine which county/ies to search for the most up to date information regarding the applicant.¹⁸
- Enhanced Nationwide Criminal Search, which compiles thousands of publicly-available data sources, includes county criminal records, state repositories, state department of corrections records and national security databases.¹⁹
- Locator Select, which specifically searches public records from booking and incarceration locations for information regarding arrest dispositions and pending cases.²⁰

Our review of these protocols leads us to conclude that Rasier-CA and Lyft are in compliance with Pub. Util. Code § 5445.2 (a)(1). Both Rasier-CA and Lyft contracted

¹⁵ Callahan Dec. at ¶ 17; Kay Dec. at ¶ 7

¹⁶ Callahan Dec. at ¶ 17; Kay Dec. at ¶ 7.

¹⁷ Callahan Dec. at ¶ 16.

¹⁸ Kay Dec. at ¶ 8.

¹⁹ Kay Dec. at ¶ 13.

²⁰ Kay Dec. at ¶ 14.

with companies (Checkr and Sterling, respectively) that conduct searches of multistate and multi-jurisdiction criminal records locators or other similar commercial nationwide databases. Checkr and Sterling also conduct a search of the United States Department of Justice National Sex Offender Public Web site.

In addition, Checkr and Sterling are credit reporting agencies (CRAs) that are accredited and audited by the National Association of Professional Background Screeners (NAPBS). In order to pass the accreditation process, a CRA must comply with the requirements that NAPBS has established in the following fields: data information and security; legal and compliance; client education; research and data standards; verification and service standards; and miscellaneous business practices. In order to ensure consistent application of these standards, the Commission has determined that if a TNC wishes to employ a CRA to conduct background checks, or if the TNC itself wishes to conduct the background checks, the accreditation standards set by the NABPS must be met. As the accreditation standards are lengthy, we have appended them to this decision as Attachment A.

But given the importance of ensuring that background check process is as comprehensive, accurate, and secure as possible, we highlight below some of the accreditation standards:

Database Criminal Records: When reporting potentially adverse criminal record information derived from a non-government owned or non-government sponsored/supported database pursuant to the federal Fair Credit Reporting Act, the CRA shall either: (a) verify the information directly with the venue that maintains the official record for that jurisdiction prior to reporting the adverse information to the client; or (b) send notice to the consumer at the time information is reported.

Auditing Procedures: CRA shall maintain auditing procedures for quality assurance in regard to their active public record researchers.

Identification Confirmation: CRA shall follow reasonable procedures to assure maximum possible accuracy when determining the identity of a consumer who is the subject of a record prior to reporting the information.

CRA shall have procedures in place to notify client of any adverse information that is reported based on a name match only.

Jurisdictional Knowledge: CRA shall designate a qualified individual(s) or position(s) within the organization responsible for understanding court terminology, as well as understanding the various jurisdictional court differences if CRA reports court records.

Verification Accuracy: CRA shall maintain reasonable procedures to assure maximum possible accuracy when obtaining, recording and reporting verification information.

Data Security: CRA shall have procedures in place to protect consumer information under the control of the CRA from internal and external unauthorized access. These procedures shall include specifications for the securing of information in both hard copy and electronic form, including information stored on portable and/or removable electronic devices.

With respect to Pub. Util. Code § 5445.2 (a)(2) and (3), a number of the offenses set forth therein that would disqualify a person from becoming a TNC driver (*e.g.* conviction of a violent felony or a violent crime, driving under the influence of drugs or alcohol) are similar to the disqualifying categories that the Commission articulated in Ordering Paragraph 4 of D.13-09-045, which states in part:

Any felony criminal conviction within seven years prior to the date of the background check for driving under the influence of drugs or alcohol, fraud, use of a motor vehicle to commit a felony, a violent crime or act of terror, a sexual offense, a crime involving property damage, and/or theft will make the applicant ineligible to be a TNC driver.

Thus, all TNCs have been under a duty since 2013 not to hire a person as a TNC driver if he/she has been convicted of any of the above disqualifying convictions within the prior seven years.

As for remaining disqualifying convictions set out in Pub. Util. Code § 5445.2 (a)(2) and (3) (*e.g.* violation of Penal Code §§ 11413, 11418, 11418.5, or 11419; Election Code § 18540; or Penal Code §§ 67, 68, 85, 86, 92, 93, 137, 138, 165, 518, 530, 18500, 484(a), 487(a), or 25540(b)), we will require Rasier-CA, Lyft, and all

other TNCs to certify by declaration that they do not contract with, employ, or retain a driver that falls within any of these disqualifying categories.

1.5. Biometric Background Checks Performed by the California Department of Justice

Biometric background checks have been employed for decades as an integral part of the process for reviewing the suitability of prospective employees.²¹ According to the State of California Office of the Attorney General’s fact sheet entitled FINGERPRINT BACKGROUND CHECK,²² the DOJ is required to maintain a statewide criminal record repository,²³ and uses this information to compile records of arrest and prosecution, known as Record of Arrest and Prosecution (RAP) sheets. The DOJ disseminates the information for law enforcement and regulatory (*i.e.* employment and licensing) purposes.²⁴ These RAP sheets are based on fingerprint submissions, “and therefore positively identified biometrically: a process by which a person’s unique identity is confirmed.”²⁵

²¹ See *The Attorney General’s Report on Criminal History Background Checks* (June 2006): “There is widespread interest in obtaining access to criminal history record information from reliable sources for the purpose of screening an individual’s suitability for employment, licensing, or placement in positions of trust.” Further: “Fingerprint identification has been a major responsibility of the FBI since 1924 and fingerprints have been a key part of the FBI’s national criminal history record system.” (at 1 and 14.) Pursuant to Rule 13.9, the Commission takes Official Notice of this report pursuant to Evidence Code § 452.

²² <https://oag.ca.gov/fingerprints>. Pursuant to Rule 13.9, the Commission takes Official Notice of this fact sheet pursuant to Evidence Code § 452.

²³ This claim is confirmed by Penal Code § 11105(a)(1): “The Department of Justice shall maintain state summary criminal history information.” State summary criminal history is defined as “the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates, of arrests, arresting agencies and booking numbers, charge, dispositions, and similar data about the person.” (Penal Code § 11105 (a)(2)(A).)

²⁴ Pursuant to Penal Code § 11105(b): “The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties....”

²⁵ <https://oag.ca.gov/fingerprints>.

The Penal Code also contains a protocol for the dissemination of criminal records. Criminal offender record information (sometimes referred to as CORI) is defined as “records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.” (Penal Code § 11075(a).) Pursuant to Penal Code § 11076, CORI may only be disseminated to agencies authorized by statute to receive such information. Pursuant to the DOJ fact sheet, the background check process is as follows:

Step 1. DOJ Fingerprint-Based Process. First, an applicant visits a Livescan location. Livescan sites require an applicant to provide an identity verification document, which does not need to include a photo of the applicant. Such documents are collected along with the applicant’s fingerprints, by employees trained and certified to “roll” fingerprints and who have themselves undergone a background check.

Step 2. Livescan transmittal. Livescan will automatically transmit the images to the DOJ fingerprint database. Information transmitted to DOJ is searched against all other fingerprint in its database. If a match is identified, the individual’s record is reviewed by a DOJ technician to assess the individual’s criminal history, and determine whether the individual’s information can be disseminated to the requesting agency (which must be statutorily authorized to receive the information). Based on these searches, the individual’s record is returned from the California DOJ to the requesting agency with either a “no record” response or a “delay notice,” indicating that manual review is underway. The no record/delay notice response is sent to the requesting agency within 48 to 72 hours of the fingerprint submission via Livescan.

Step 3. Research and Verification. DOJ staff researches each open arrest record that lacks associated criminal history and/or a disposition. Its staff will make a “genuine effort” mandated by statute and case law, which consists of contacting arresting agencies, District Attorney, court or probation offices to determine disposition of that arrest.²⁶ Some entities

²⁶ Xavier Becerra, California Attorney General. *Fingerprint Background Checks*. <https://oag.ca.gov/fingerprints>. Pursuant to Rule 13.9 and Evidence Code § 452, the Commission takes

allow DOJ to connect directly to local public or non-public case management systems; otherwise DOJ contacts the entity and receives the information by phone or fax.²⁷ Once the “genuine effort” is fulfilled, the criminal history record is updated, the RAP sheet is reviewed again, and the background check response is prepared and sent to the applicant agency.²⁸

A statutory mandate allows DOJ to provide the information it possesses only to those authorized to receive it. (Penal Code § 11105). Information provided includes, but is not limited to, all convictions and sex offender status. DOJ will not disseminate information regarding an arrest that lacks follow up information or a final disposition, typically those made over 20 years ago.

DOJ follows the same process if a California agency requests a federal fingerprint background check.²⁹ The DOJ forwards the fingerprint images to the FBI to perform a fingerprint-based search of records in the FBI’s national criminal history database.³⁰ If the applicant’s fingerprints match fingerprints in the national criminal history database, the FBI sends the DOJ a cumulative RAP sheet that contains criminal history information from any states or federal agencies that have reported the information to the FBI.³¹ If there is not a matching disposition for every out-of-state or federal arrest, the DOJ must again perform the “genuine effort” to obtain the missing disposition information. Once the “genuine effort” is fulfilled, a DOJ technician must review the updated RAP sheet and prepare the background check response.³²

official notice of the information from the Attorney General’s website regarding the Department of Justice’s fingerprint background checks.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Federal law precludes the DOJ from disseminating federal criminal history information to non-governmental entities.³³ Such entities receive a “fitness determination” from DOJ.³⁴

Under Penal Code § 11105.2, the DOJ may provide subsequent state or federal arrest or disposition notice to any entity authorized by state or federal law to receive state or federal summary criminal history information upon the arrest or disposition of any person whose fingerprints are maintained at DOJ or the FBI as the result of an application for licensing, employment, certification or approval. The statute also defines certain terms and criteria. Relevant terms include “Need to Know,” which is the necessity to obtain CORI in order to execute official responsibilities; and “Right to Know,” the right to obtain CORI pursuant to a court order, statute or decisional law.

Penal Code § 11102.2 requires every authorized agency to designate at least one Custodian of Record responsible for the security, storage, dissemination, and destruction of the criminal records furnished to the agency and who serves as the primary contact for DOJ for any related issues.

1.6. Assembly Bill 2189 and the Commission’s Authority to Interpret, Enforce, and Adopt Additional Background Requirements

While the Commission set out questions related to biometrics within background checks in two ruling, the Legislature in 2016 articulated a scope and process for background checks for TNC drivers. On September 28, 2016, Governor Brown approved Assembly Bill 1289,³⁵ which added § 5445.2 to the Pub. Util. Code, and required TNCs to conduct the following criminal background checks on TNC drivers:

³³ *Id.* “Access to criminal history summary records maintained by the DOJ is restricted by law to legitimate law enforcement purposes and authorized applicant agencies.”

³⁴ California Department of Justice, Bureau of Criminal Information and Analysis Applicant Record & Certification Branch. Christina Rogers, Assistant Bureau Chief. February 17, 2017.

³⁵ Stats 2016, Ch. 740.

Pub. Util. Code §	Topics: Requirements for Background Checks/Restrictions on TNC driver hiring, contracting, and retention	Text of Statute
5445.2(a)(1)	Scope of required minimum background check that TNC or a third party must perform	Multistate and multijurisdiction criminal records locator or other similar commercial nationwide database with validation (5445.2(a)(1)(A)); and Search of United States Department of Justice National Sex Offender Public Web site (5445.2(a)(1)(B))
5445.2(a)(2)	A TNC may not contract with, employ, or retain persons	Currently registered on the DOJ National Sex Offender Public Web site (5445.2(a)(2)(A)); Convicted of either a violent felony or a violation of Penal Code §§ 11413, 11418, 11418.5, or 11419 (5445.2(a)(2)(B))
5445.2(a)(3)	A TNC may not contract with, employ, or retain persons convicted of any of the following offenses within the previous seven years	Misdemeanor assault or battery (5445.2(a)(3)(A)); Domestic violence offense (5445.2(a)(3)(B)); Driving under the influence of alcohol or drugs (5445.2(a)(3)(C)); A felony violation of Elections Code § 18540, or Penal Code §§ 67, 68, 85, 86, 92, 93, 137, 138, 165, 518, 530, 18500, 484, 487(a), or 25540(b) (5445.2(a)(3)(C))

By adding Pub. Util. Code § 5445.2(a)(5), the Legislature made it clear that the above requirements were *minimum* standards, since nothing in the statute should be interpreted to prevent a TNC from imposing additional background check standards. Similarly, pursuant to Pub. Util. Code § 5441, this Commission is also free to require

additional background checks as long as the Commission acts in a manner consistent with Article 7 (regulations for Transportation Network Companies [5430-5445.2] of the Pub. Util. Code. As newly enacted Pub. Util. Code § 5445.2 is part of Article 7, the Commission has the legislatively-granted authority to exercise its rulemaking power and require that TNCs conduct searches of additional information databases that could have information bearing on the suitability of an existing or prospective TNC driver.

Even without Pub. Util. Code § 5441, the Commission would be within its authority to interpret and, if necessary, require TNCs to adopt additional background-check requirements. The Commission is a state agency of constitutional origin whose power to establish rules has been liberally construed. (*So. Cal. Edison Co v. Peevey* (2003) 31 Cal.4th 781, 792; and Cal. Const., Art. XII, § 4 [The Commission “may fix rates and establish rules for the transportation of passengers...by transportation companies”].) The grant of authority over transportation companies was extended to charter-party carriers with the 1961 enactment of the Charter-Party Carriers of Passengers Act, which added Pub. Util. Code §§ 5251-5444. Later, with D.13-09-045, this Commission determined that TNCs were a category of charter-party carriers over which this Commission had jurisdiction, a decision the Legislature recognized when it enacted Pub. Util. Code §§ 5430-5444. Of particular note is Pub. Util. Code § 5440 (a), which states:

The commission has initiated regulation of transportation network companies as a new category of charter-party carriers and continues to develop appropriate regulations for this new service.

Pursuant to Pub. Util. Code § 5381:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State any may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

By extension, the Commission's broad authority granted by the California Constitution and by Pub. Util. Code § 5381 to regulate charter-party carriers and to do all things whether specifically designated or not, would include the ability to interpret and apply the TNC background-check provision found in Pub. Util. Code § 5445.2.

2. Discussion

The Commission received numerous Comments and Reply Comments from parties, as well as 1,817 responses from the public in online comments as of July 19, 2017. The general position taken by the parties aligns with one of two viewpoints—support or opposition for requiring fingerprint-based background checks of all existing and prospective TNC drivers. Those Parties supporting fingerprint-based background checks include the SFTWA, LADOT, SFO, and the SFMTA. HopSkipDrive also supports background checks but for all TNCs, not just those that primarily focus on transporting unaccompanied minors. Opposition to the fingerprint requirement comes from the two major TNCs, Rasier and Lyft. Further discussion herein will at times refer generally to these parties as proponents or opponents. As noted above, among the public survey responses submitted, 48% support requiring fingerprint-based background checks, 49% oppose, and about 2% are undecided.

2.1. Question 1: What Public Policy and or Safety Objectives Would be Achieved by Requiring All Existing and Prospective TNC Drivers to Undergo a Biometric (i.e. the Use of a Person's Physical Characteristics and Other Traits) Background Check?

2.1.1. Party Comments

The supporters of fingerprint-based background checks strongly argue this requirement will improve rider safety, arguing that it is a reliable and effective means of

screening drivers.³⁶ They state that only fingerprinting can positively identify a driver-applicant,³⁷ whereas the currently required commercial background checks are susceptible to applicants using an alias or changed social security number.³⁸

Furthermore, these parties drew attention to a case where the San Francisco and Los Angeles District Attorney alleged over twenty Uber drivers that had passed the company's background check had a disqualifying criminal record.³⁹ However, this 2014 claim of unlawful and fraudulent business practices relating to the company's safety representations ultimately settled, resulting in neither confirmation nor refutation of the allegations.⁴⁰

In contrast, Rasier and Lyft set forth a number of negative outcomes that could occur if the Commission adopted a biometric-based background check requirement: first, it is a myth that scanned fingerprint matching is infallible since both false positive and false negatives can occur with fingerprint matching.⁴¹ As support, Lyft cites to the California Attorney General's website for the proposition that poor fingerprint quality impacts the system's ability to confirm or dismiss a potential fingerprint match.⁴² Lyft also cites to a warning from the FBI about the increasing incidence of individuals altering their fingerprints to fool the FBI's Automated Fingerprint Identification System.⁴³

³⁶ Opening Comments of SFTWA at 1, May 1, 2017.

³⁷ Opening Comments of SFO and SFMTA at 1, May 1, 2017.

³⁸ Opening Comments of LADOT at 1, May 1, 2017.

³⁹ Opening Comments of SFTWA at 2; Opening Comments of SFO and SFMTA at 2; Opening Comments of LADOT at 2.

⁴⁰ Opening Comments of SFTWA at 2.

⁴¹ Opening Comments of Lyft at 15. The Automated Fingerprint Identification System is a national fingerprint and criminal history system that is maintained by the FBI's Criminal Justice Information Services Division. (*The Integrated Automated Fingerprint Identification System*. U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.)

⁴² *Id.*

⁴³ *Id.*

Second, Rasier-CA argues that criminal databases may be incomplete because a criminal history record can be triggered by a citation or other event where a fingerprint is not taken, and because there are some situations where fingerprints are not always taken at arrest.⁴⁴ If either of these situations occurs, the criminal history event will not appear in the repository.

The TNCs also assert that even if safety benefits exist, they do not outweigh the harm of a fingerprint requirement.⁴⁵ The flaws that the TNCs' claim are inherent in the fingerprint-based criminal history reports unfairly disadvantage all individuals seeking economic opportunities, especially minority populations.⁴⁶ Citing a series of historical and statistical studies, Rasier-CA argues that states have difficulty properly linking the arrest records with disposition information.⁴⁷ As African Americans are arrested at rates greater than their representation in the general population, the lack of complete disposition information, combined with the arrest incidents of persons of color, can result in certain racial groups being denied an employment opportunity as a TNC driver.⁴⁸ Thus, Rasier-CA and Lyft show skepticism for the practice of fingerprinting generally, especially as a means of determining whether an employment contracting opportunity should be offered to an individual.⁴⁹

Additionally, Rasier-CA and Lyft assert that potential harm comes from inefficiencies and economic concerns. TNCs fear delay in receiving the background check results due to already overburdened government agencies needing to complete

⁴⁴ Opening Comments of Rasier-CA at 5.

⁴⁵ Opening Comments of Lyft at 14; Opening Comments of Rasier at 4, May 1, 2017.

⁴⁶ Opening Comments of Rasier-CA at 23.

⁴⁷ Opening Comments of Rasier-CA at 5.

⁴⁸ Opening Comments of Rasier-CA at 24.

⁴⁹ Opening Comments of Lyft at 14-17; Reply Comments of Rasier at 5-7, May 15, 2017.

arrest dispositions, as well as from processing fingerprints.⁵⁰ Rasier-CA believes its current background check is more efficient and thus reduces these concerns.⁵¹

Further, Rasier-CA draws on the *Maryland Order* as support for the view that commercial background checks can meet safety standards just as well as fingerprint-based government checks drawing on law enforcement databases.⁵² Maryland's PSC describes Rasier's commercial background checks as being "as comprehensive and accurate as the government fingerprint-based background check process."⁵³

2.1.2. Discussion

After weighing the respective merits of each side's position, the Commission declines at this time to add a biometric-based background requirement to those in Pub. Util. Code § 5445.2. The Commission finds that the commercial background checks currently employed by Rasier and Lyft are compliant with the standards imposed by Pub. Util. Code § 5445.2. Although we recognize the public's familiarity with fingerprinting, we do not see that a demonstratively greater level of safety would be added over and above the current background-check protocols. As the record shows, individuals submitting fingerprints via Livescan are not required to use a photo I.D. to establish their identity at the Livescan site. In addition, law enforcement agencies themselves have acknowledged that the quality of their records is only as accurate and up-to-date as the information provided by local courts and law enforcement agencies. When errors exist in criminal justice records or resource shortages lengthen the time required for final case dispositions, the time required for a DOJ technician to resolve an individual's fingerprint can contribute to a lengthy delay in determining their eligibility for employment. In

⁵⁰ Opening Comments of Rasier at 5-6.

⁵¹ *Id.* at 8.

⁵² *Id.* at 4-5.

⁵³ *Id.* at 5.

contrast, with the standards set by the Legislature in Pub. Util. Code § 5445.2 and documentation to be submitted to the Commission by each TNC consistent with this decision, the drawbacks of a fingerprint-based background check can be avoided, while still ensuring public safety. In sum, allowing a process that includes commercial background checks, presented to the Commission's TEB via attestation with supporting documentation and subject to staff review and verification, satisfies the Commission's public policy and safety objectives, and allows flexibility to meet the background requirements that the Legislature has mandated.

In deciding not to add a biometric background requirement, we are in no way endorsing the argument that it is inappropriate for the Commission to require fingerprint-based background checks. Lyft believes that because the Legislature had the opportunity to require fingerprint-based background checks, but chose not to, the Commission is preempted from setting this standard. But for the reasons set forth above at Section 1.6, this argument has no merit, as it would be contrary to the Commission's expressed grant of authority to interpret and enforce laws affecting its ability to regulate those entities that are subject to the Commission's jurisdiction.

2.2. Question 2: Does Subjecting All TNC Drivers to a Biometric Background Check Adversely Affect the Chances of Persons of Different Races or Ethnicities to Pass the Background-Checking Process?

2.2.1. Party Comments

There is a distinct split in opinions among the proponents and opponents of fingerprint-based background checks regarding impact on racial and ethnic groups. As discussed above in Section 2.1.1., the TNCs believe requiring fingerprint-based background checks will disparately impact some minority groups, stemming from the potential delay in receiving fingerprint-based background checks from government agencies.

The proponents of fingerprinting do not share this same concern. Although they acknowledge the problem of disproportionate arrests among certain minority groups,⁵⁴ they believe current California laws adequately protect these minority groups during the hiring process. The proponents point to laws such as 11 C.C.R. § 721-24, that prevent the dissemination of arrest records without a complete arrest disposition. This keeps people who were unfairly arrested from having such arrests without disposition reported. The fingerprint-based background check proponents add support to their argument by noting the large number of minorities currently employed in their localities as taxi drivers.⁵⁵ They say this shows fingerprint-based background checks have not limited people of different races and ethnicities from getting hired to drive.

TNCs counter the proponents by saying that the prohibition against dissemination of incomplete arrest records is exactly the cause of their concern—that it creates unfair delay.⁵⁶ The concern is not that fingerprinting will allow TNCs to reject applicants based on incomplete arrest dispositions, but that the process of completing arrest dispositions means certain minority groups are disproportionately forced to wait. This argument accepts the protections provided by California law, but denies that the law or anything else can reduce the delay that certain minority groups will disproportionately face.

Additionally, TNCs rebut the worth of the fact that a large number of taxi drivers are from minority groups.⁵⁷ In their view, showing the number of employed drivers does not enlighten the issue of delays in hiring. Nor does it show that these minorities are from groups subject to disproportionate arrests. Rasier's Reply Comments claim the

⁵⁴ Opening Comments of LADOT at 3; Opening Comments of SFTWA at 5; Opening Comments of SFO and SFMTA at 4.

⁵⁵ Opening Comments of LADOT at 3.

⁵⁶ Reply Comments of Rasier at 7.

⁵⁷ *Id.* at 7-8.

proponents point here “. . . reveal[s] nothing about the racial impact of a fingerprint-based background check . . .”⁵⁸

2.2.2. Discussion

The record developed to date does not permit the Commission to make a determination one way or another about the claimed discriminatory impact of biometric checks on minority TNC driver applicants. While we are concerned about the potential disparate impact that could be felt by minority groups that may face disproportionate arrests levels and the criminal justice system’s slow process – or failure – to achieve disposition of the arrests, our decision today is based on the showing by some of the TNCs that the background check processes they currently use meet the safety concerns of the Commission without a biometric background component. The Commission does, however, reserve the right to study this question further.

2.3. Question 3: In Addition to a Biometric Background Check, Are There Other Background Check Protocols that the Commission Should Consider Adopting?

In answering Question 3, the parties combined their responses so that they are equally applicable to Questions 4⁵⁹ and 5.⁶⁰ The Commission will do the same with its response.

2.3.1. Comments

Some comments focused on facilitating a two-tiered system⁶¹ incorporating both fingerprint-based and commercial background checks. These points will not be as

⁵⁸ *Id.* at 8.

⁵⁹ How Would Any Other Background Check Protocols Described in Question 3 Above Satisfy California’s Public Policy and or Safety Objectives?

⁶⁰ What Background Check Protocol Should the Commission Adopt to Comply with the Requirements and Goals of Assembly Bill 1290, Codified at Public Utilities Code Section 5445.2?

relevant to our discussion here since we have decided not to implement a fingerprint-based background check standard. For that reason, reference to the proponents' discussion of a two-tiered system will not be included.

The TNCs provided a variety of suggestions for potential additional requirements to the current commercial background check standard. Both Rasier and Lyft suggested we permit only commercial background check companies that have been audited and accredited.⁶² They name the National Association of Professional Background Screeners⁶³ (NAPBS) as such a group that could audit and accredit companies that perform background checks. Additionally, Rasier and Lyft seek clarification of any Commission rules and regulations that may conflict with or relate to Public Utilities Code Section 5445.2,⁶⁴ as well as definitions of terms in that code section.⁶⁵

Lyft made some further proposals that Rasier did not. These include the requirement that TNCs verify applicant identity by reference to a California driver license⁶⁶ and that TNCs conduct annual background checks.⁶⁷ The license requirement for the application process provides a positive identification of the driver, while not being overly burdensome because a driver license is already an application requirement. It simply incorporates the license into the background check phase of hiring. The annual background check requirement is an idea that comes from Lyft's current business practice. Lyft runs a background check on the anniversary of each driver's approval to

⁶¹ Opening Comments of SFTWA at 6; Opening Comments of LADOT at 3; Opening Comments of SFO and SFMTA at 6.

⁶² Opening Comments of Rasier at 12; Opening Comments of Lyft at 10.

⁶³ *See generally* National Association of Professional Background Screeners, <https://www.napbs.com/>. (last visited July 31, 2017).

⁶⁴ Opening Comments of Rasier at 12.

⁶⁵ Opening Comments of Lyft at 9.

⁶⁶ *Id.* at 13.

⁶⁷ *Id.*

operate on the Lyft platform. They claim that the Commission could make this a requirement of all TNCs to help further the Commission's safety objectives.

For proponents of fingerprint-based government background checks, there were only a few suggestions made that did not necessarily incorporate the fingerprint standard. All such suggestions came from SFTWA. Their suggestions include use of the Trustline Registry⁶⁸ and limiting commercial background checks to only revealing those crimes that would disqualify the driver.⁶⁹ The Trustline Registry was suggested in combination with a fingerprint-based check, but the proposal could also be implemented without fingerprint-based background checks. The suggestion to limit searchable background information comes from SFTWA's fear of abuse by TNCs. SFTWA claims abuse could occur with the current background check system because TNCs can receive a wealth of background information that is beyond the information relevant to disqualifying offenses. SFTWA does not cite any occurrences of this, but believes it could easily happen.

2.3.2. Discussion

Questions three through five generally sought comments on what further measures to take for TNC background check requirements, how those measures improve safety, and how they relate to Assembly Bill 1289. The parties all returned thoughtful proposals, some of which will be adopted in some variation. Other proposals were well-taken and considered, and will be kept in discussion by the Commission moving forward as we continue to promote safety. Policies that this Commission adopts today are as follows:

First, if a TNC uses a commercial background check company to conduct background checks of its driver applicants, the company must be accredited by the

⁶⁸ Opening Comments of SFTWA at 6. The Trustline Registry is California's database of providers of care to minors, in which the provider has cleared a criminal background check, including fingerprinting. The Commission requires TNCs that primarily transport minors to use the Trustline Registry for their drivers. D.16-04-041.

⁶⁹ *Id.* at 7.

NAPBS BSCC and must comply with the audit and accreditation criteria discussed in Section 1.4 and Ordering Paragraph 2 of this decision. Commercial background check companies have the support of the California Legislature, as seen in Pub. Util. Code § 5445.2, and the Commission similarly finds that they have the ability to safely evaluate driver-applicants for TNCs. If a TNC conducts background checks in-house, then the TNC must be accredited by the NAPBS BSCC and must comply with the audit and accreditation criteria discussed in section 1.4 and Ordering Paragraph 2 of this decision.

Second, each TNC must receive proof of accreditation of the background check company and provide proof of accreditation with any reporting that the Commission may require. Such proof will be required of presently licensed TNCs within 30 days of this decision, and annually thereafter. Such proof will become part of the application process for new TNCs requesting a license to operate in California.

Third, the background screening for each TNC driver must be conducted prior to the granting of authorization to operate on the TNC's platform and repeated at least once per year thereafter, for as long as the TNC driver is authorized to operate on the TNC's platform.

Fourth, we limit the information a TNC can require from a background check to those disqualifying categories of offenses and convictions set forth in Pub. Util. Code § 5445.2. This protects applicants from any potential abuse, while not hampering the ability of TNCs to hire safe drivers.

3. Comments on Proposed Decision

The proposed decision of Commissioner Randolph in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were received on _____ from _____. Reply comments were received on _____ from _____.

4. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Each TNC that responded in this proceeding performs similar background checks to identify drivers, search for personal information and verify information accuracy.

2. Rasier-CA and Lyft utilize background check companies Checkr and Sterling, respectively. Checkr and Sterling are credit reporting agencies audited and accredited by the BSCC of the NAPBS.

3. TNC applications require prospective drivers to provide a basic set of personal data points, such as full name, photo, social security number, driver license number, date of birth, address, phone number, insurance information and vehicle information.

4. Background check companies utilize application data to search for additional records associated with the driver-applicant.

5. Checkr and Sterling utilize an applicant's geographic location to search for electronic and paper criminal records, and compile a list of offenses.

6. Rasier-CA states its background checks search approximately 1500 national, state and local criminal databases that make such information public.

7. Lyft utilizes three databases compiled by private companies: Social Security Number Trace Database, Enhanced Nationwide Criminal Search, and Locator Select.

Conclusions of Law

1. Rasier-CA's background-check protocol complies with Publ. Util. Code § 5445.2.

2. Lyft's background-check protocol complies with Pub. Util. Code § 5445.2.

3. The background checks performed by Ainos dba Witz, Altruistic, Inc. dba Bounce, Executive Rides, Rasier-CA, Ride Plus, LLC, See Jane Go, Inc., Lyft, Silver Ride, LLC, Sitbaq, Inc., Social Drv, and Wingz presently comply with the requirements of D.13-09-045.

4. The background checks performed by Kanga Do; Hop, Skip and Drive; and Zum comply with the requirements of D.13-09-045 and D.16-04-041.

5. A TNC may conduct, on an in-house basis, the background checks for its participating and/or prospective drivers provided the TNC complies with Pub. Util. Code § 5445.2.

6. A TNC that is already permitted to operate in California, and elects to conduct the background checks on an in-house basis should satisfy all the requirements of Pub. Util. Code § 5445.2, as well as the additional requirements set forth in Ordering Paragraph 2 of this decision, and should file and serve a declaration of compliance with the background check requirements no later than 30 days following the issuance of this decision.

7. A prospective transportation company that wishes to conduct, on an in-house basis, the background checks for its participating and/or prospective drivers should confirm with the Commission's Transportation Enforcement Branch, as part of the application process, that it will comply with the requirements of Pub. Util. Code § 5445.2, as well as the additional requirements set forth in Ordering Paragraph 2 of this decision.

8. All current and future TNC applicants should certify, as part of their applications, that their background check process complies with Pub. Util. Code § 5445.2, as well as the background check requirements set forth in Ordering Paragraphs 1 and 2 of this decision.

9. In addition to the requirements set forth in Pub. Util. Code § 5445.2, every licensed TNC should comply with the following additional requirements:

- First, commercial background check companies that a TNC employs must be accredited by the National Association of Professional Background Screener's BSCC.
- Second, each TNC must receive proof of accreditation of the background check company and provide proof of accreditation with any reporting that the Commission may require.

- Third, the background screening for each TNC driver will be conducted for each year the TNC driver subscribes to the app.
- Fourth, we limit the information a TNC can require from a background check to those disqualifying categories of offenses and convictions set forth in Pub. Util. Code § 5445.2.

O R D E R

IT IS ORDERED that:

1. Any company wishing to provide Transportation Network Company (TNC) services in California shall satisfy the background-check requirements of Pub. Util. Code §5445.2 for its existing and prospective drivers:

- A TNC or a third party working on the TNC's behalf must perform a search of multistate and multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation; and conduct a search of the United States Department of Justice National Sex Offender Public Web site.
- A TNC may not contract with, employ, or retain persons currently registered on the Department of Justice National Sex Offender Public Web site; or convicted of either a violent felony or a violation of Penal Code §§ 11413, 11418, 11418.5, or 11419.
- A TNC may not contract with, employ, or retain persons convicted of any of the following offenses within the previous seven years: misdemeanor assault or battery; domestic violence offense; driving under the influence of alcohol or drugs; a felony violation of Elections Code § 18540, or Penal Code §§ 67, 68, 85, 86, 92, 93, 137, 138, 165, 518, 530, 18500, 484, 487(a), or 25540(b).

In addition to the requirements set forth in Pub. Util. Code § 5445.2, every licensed TNC shall comply with the following additional requirements:

- First, commercial background check companies that a TNC employs must be accredited by the National Association of Professional Background Screener's BSCC.
- Second, each TNC must receive proof of accreditation of the background check company and provide proof of accreditation with any reporting that the Commission may require.

- Third, the background screening for each TNC driver will be conducted for each year the TNC driver subscribes to the app.
- Fourth, we limit the information a TNC can require from a background check to those disqualifying categories of offenses and convictions set forth in Pub. Util. Code § 5445.2.

2. A criminal background check company (sometimes referred to as a credit reporting agency or CRA) that is retained by a Transportation Network Company must comply with the audit and accreditation standards that the National Association of Professional Background Screeners has adopted in the following fields: data information and security; legal and compliance; client education; research and data standards; verification and service standards; and miscellaneous business practices. These audit and accreditation standards, which are appended to this decision as Attachment A, include, but are not limited to, the following:

- a. **Database Criminal Records:** When reporting potentially adverse criminal record information derived from a non-government owned or non-government sponsored/supported database pursuant to the federal Fair Credit Reporting Act, the CRA shall either: (a) verify the information directly with the venue that maintains the official record for that jurisdiction prior to reporting the adverse information to the client; or (b) send notice to the consumer at the time information is reported.
- b. **Auditing Procedures:** CRA shall maintain auditing procedures for quality assurance in regard to their active public record researchers.
- c. **Identification Confirmation:** CRA shall follow reasonable procedures to assure maximum possible accuracy when determining the identity of a consumer who is the subject of a record prior to reporting the information. CRA shall have procedures in place to notify client of any adverse information that is reported based on a name match only.
- d. **Jurisdictional Knowledge:** CRA shall designate a qualified individual(s) or position(s) within the organization responsible for understanding court terminology, as well as understanding the various jurisdictional court differences if CRA reports court records.
- e. **Verification Accuracy:** CRA shall maintain reasonable procedures to assure maximum possible accuracy when obtaining, recording and reporting verification information.

- f. **Data Security:** CRA shall have procedures in place to protect consumer information under the control of the CRA from internal and external unauthorized access. These procedures shall include specifications for the securing of information in both hard copy and electronic form, including information stored on portable and/or removable electronic devices.

3. Each Transportation Network Company (TNC) currently permitted to operate in California shall, within 30 days from the issuance of this decision, file and serve on the service list of this proceeding a declaration attesting to how it complies with Pub. Util. Code § 5445.2 as well as the additional requirements adopted by this decision. The assigned Commissioner, the assigned Administrative Law Judge, and the Commission's Transportation Enforcement Bureau will have the discretion to determine if any follow-up inquiries are warranted regarding a TNC's background-check program.

4. As an alternative to Ordering Paragraphs 1 and 2, a Transportation Network Company (TNC) may elect to conduct, on an in-house basis, its background checks for each driver, or a person who has applied to be a participating driver of the TNC. The in-house background check must comply with Pub. Util. Code § 5445.2, as well as the additional requirements set forth in Ordering Paragraph 2. A TNC that elects to conduct its background checks on an in-house basis shall file and serve a declaration of compliance with the background check requirements within 30 days from the issuance of this decision. As for a TNC that seeks authority to operate in California after the issuance of this decision and wishes to conduct its background checks on an in-house basis, the TNC must include a declaration of compliance as part of its TNC application that is submitted to the Commission's License Section.

5. Driver shall mean: a participating driver or driver who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers; or a person who has applied to be a participating driver of a transportation network company. A participating driver or driver shall carry proof of Transportation Network Company insurance coverage with him or her at all

times during his or her use of a vehicle in connection with a transportation network company's online-enabled application or platform.

6. Rulemaking 12-12-011 remains open.

Dated _____, at San Francisco, California.