

Prepared Testimony of

*David W. Sweet*

Vice Chairman

Pennsylvania Public Utility Commission

*before the*

Pennsylvania Senate Democratic Policy Committee

June 6, 2019



Pennsylvania Public Utility Commission

400 North Street

Harrisburg, Pennsylvania 17120

Telephone (717) 787-4301 <http://www.puc.pa.gov>

Thank you, Chairman Boscola, Senator Williams, other members of the Committee, and all others gathered here this morning. I am David W. Sweet, Vice Chairman of the Pennsylvania Public Utility Commission (PUC). It is my pleasure to join you today to testify on behalf of the Commission and our dedicated staff concerning the PUC's experiences with Transportation Network Service (TNC service) in Pennsylvania.

Before I explore our most recent work with TNCs, which examined the driver background check review process used by Uber – the largest of the providers operating in the Commonwealth – I think it would be helpful to summarize our jurisdiction.

The PUC has jurisdiction over taxi service in every county in Pennsylvania except Philadelphia, which is covered by the Philadelphia Parking Authority. In addition, the PUC exercises some jurisdiction over TNC service. For the purposes of our testimony today, all discussion about PUC oversight of TNC's relates to the service in the 66 counties outside Philadelphia.

The first application to provide TNC service in Pennsylvania was filed with the Commission in March of 2014. This application was filed by an existing taxi operator, Yellow Cab Company of Pittsburgh, Inc. While the proposed service was very similar to traditional taxi service, there were significant differences, such as vehicle ownership and flexible rates. The proposed service did not fit neatly within any of the Commission's existing categories of passenger transportation service. Therefore, the Commission classified the new service as "experimental service." The Commission approved the

application in May 2014, for a two-year period, authorizing the first TNC service to operate in Pennsylvania, known as “Yellow Z.”

We knew that it was a new kind of service that did not fit squarely within the requirements for traditional taxi service. For example, traditionally certificated taxicab companies are required, by regulation, to own the vehicles used in service, drivers are prohibited from vehicle ownership. The reason for this was that the Commission wanted to ensure that the taxicab company was the entity providing the service and was responsible for all aspects of the service.

While this goal was laudable and ensured accountability, it also meant that taxicab companies could not readily augment their fleet size in response to temporary changes in demand for service. Additionally, the fixed rate structure attendant to taxi service precluded meaningful pricing adjustments to reflect necessary premiums for peak demand periods.

Significantly, TNC service provided for a new business model where drivers would use their personal vehicles to provide service. Additionally, the TNC rate structure was flexible to accommodate peak demand periods. Both changes to traditional taxi service would, if properly deployed, help ensure that supply would meet demand. The necessity of having an underutilized, stand-by fleet of vehicles was obviated by the advent of TNC service.

However, the Commission recognized that certain elements of regulation were indispensable, including vehicle safety, driver integrity, and proper insurance. Both Uber

and Lyft were resistant to the exercise of regulatory authority over their services, and it took some persuasion by way of formal complaints and the imposition of civil penalties totaling \$3.75 million<sup>1</sup> to convince them that Pennsylvania was serious about consumer safety.

Eventually, both Uber and Lyft ultimately recognized the reality of regulation, came into compliance with PUC requirements, and were granted authority to operate TNC service in Pennsylvania for a period of two years.

During this time, the General Assembly enacted Act 164 in 2016. Act 164 addressed the Commission's concerns regarding consumer protection, including vehicle safety, driver integrity, and proper insurance. The Commission implemented Act 164 and, for the most part, it has gone smoothly.

The number of violations that the Commission has found since 2016 is minimal, and most violations are minor, such as failure to display the appropriate TNC markings on vehicles.

Regarding insurance compliance, the Commission has not had any issues with coverage or claim adjustments. The Commission is not aware of any significant accidents involving TNC companies, or that accidents are occurring at an unusually high rate.

---

<sup>1</sup> The final PUC approved settlement with Uber included a \$3.5 million civil penalty (C-2014-2422723). The final settlement with Lyft included a \$250,000 civil penalty (C-2014-2422713).

The Commission believes that the public has largely accepted dynamic pricing as a necessary trade-off for service convenience and availability.

The Commission's most pressing concern was for driver integrity – one of the issues most frequently discussed in connection with TNCs. We recognize that there have been serious incidents in other jurisdictions<sup>2</sup> but that incidents here have been less frequent.<sup>3</sup> Equally important to note is that while alleged criminal incidents, such as assaults, are investigated and prosecuted by local police departments and prosecutors, the Motor Carrier Enforcement Division of the PUC's Bureau of Investigation & Enforcement conducts separate investigations of those incidents, to determine if any state TNC regulations have been violated and to ensure that TNC operators have responded appropriately.

Over the past 12 months the PUC's Motor Carrier Enforcement activities have included a series of random safety inspections at popular destinations and entertainment venues (where history has shown that enforcement officers are most likely to find vehicles and/or drivers with violations), along with random checks of driver record history and criminal backgrounds.

---

<sup>2</sup> A Newsweek article found that Uber and Lyft drivers had been accused of more than 120 rapes and sexual assaults in the prior four years, but that Uber alone provided 2.4 billion trips during that time period. Newsweek, May 1, 2018.

<sup>3</sup> Pittsburgh police arrested an Uber driver and charged him with two felony counts of kidnapping, two misdemeanors and two summaries on May 11, 2019, when he parked the car and told his female passengers that they were not going anywhere. They escaped unharmed. The driver was an assistant professor at a Penn State branch campus who is now on administrative leave. In Chester County, police charged an Uber driver with the rape of an unconscious passenger in February 2018.

As a result of those investigations, officers placed two (2) vehicles out-of-service for an expired safety inspection decals; one (1) vehicle was placed out-of-service for a tire with no measurable tread; two (2) Uber drivers were cited for overloading the vehicle; and 12 drivers had marking violations (i.e. not the displaying the TNC logo decal in the lower right portion of the vehicle windshield). Additionally, officers identified seven (7) complaints involving Uber drivers operating “off the app” – taking cash payments for curbside pickups not arranged through the TNC service, and nine (9) complaints of overcharging. All these incidents were addressed promptly by the TNCs. Also, in each of the investigations conducted by the PUC, driver and criminal backgrounds were reviewed and no violations that would prohibit those individuals from working as TNC drivers were identified.

Ultimately, public safety is the central focus of PUC jurisdiction. To that end, the Commission’s Bureau of Audits recently concluded an in-depth performance review to assess the effectiveness of driver onboarding, background checks, and driver quality assurance programs used by Uber. This was a first-of-its-kind review in Pennsylvania, and to the best of our knowledge, the first to be conducted and publicly released anywhere in the country.<sup>4</sup>

The PUC Report on the Uber Background Check Process was released at the Commission’s March 14, 2019 public meeting, as was the accompanying implementation plan submitted by Uber. The review identified seven recommendations to improve the

---

<sup>4</sup> <http://www.puc.pa.gov/pcdocs/1612286.pdf>

background check process as well as related safety and operational aspects of the process – and Uber either accepted or partially accepted all seven recommendations and detailed their plans to address these issues as we move forward.

It is important to note that Uber does meet Pennsylvania’s regulatory requirements for background checks, which include an initial criminal and driver history check before a driver begins service, a follow-up check after one year, and subsequent checks every two years after that. Still, the PUC review found opportunities for further improvement, including:

- The PUC review noted that Uber’s background check process and “continuous monitoring” features can be improved in order to facilitate a quick response to situations where a driver originally passes a background check but later commits an act that disqualifies them from using the platform. Although Uber has taken steps to strengthen its background check processes, it will take further coordination with the General Assembly and other stakeholders to fully implement a continuous driver monitoring system in Pennsylvania.
- The PUC review also recommended redesigning Uber’s “Safety Toolkit” icon allowing for quicker and easier identification. This toolkit is part of the Uber App, which is used by riders and drivers, and includes several safety features – allowing riders to share information about their trip with friends and contact 9-1-1 in an emergency.

- Our auditors urged Uber to explore ways to gather more details regarding complaints in order to further strengthen the process.
- To avoid situations where a driver is terminated from one TNC service but could continue driving for other service, PUC auditors recommend that TNCs, taxi companies and other stakeholders explore ways to share information about serious safety concerns and use driver history and deactivation information to supplement their background check systems and further strengthen safety for the industry as-a-whole.
- Auditors encouraged Uber’s development and deployment of other safety-related initiatives, including ways to provide detailed information to 9-1-1 dispatchers during a reported emergency, such as the users location and make/model/license number of the vehicle; an automated system to identify when accidents may have occurred, prompting a check with the rider and driver to determine if they require assistance; and better signage to help riders accurately identify vehicles at pick-up locations – including color-coded beacons in a driver’s vehicle.
- During the Uber audit, fingerprinting drivers during the background check process was considered and discussed with the Company. Fingerprinting could help strengthen the background check process by reducing false positive/negative hits from database background searches, more accurately identify counties where individuals have been arrested, and in general, focus background searches and provide additional information for consideration. However, the company raised a



number of concerns. One concern was based around the quality of fingerprint records - they are often incomplete with no final disposition included in the fingerprint systems and/or inconsistent from area to area. Therefore, all that is known is that the individual was arrested but not if they were found guilty, if the case was still in progress, if charges had been dropped, etc. The company also raised discrimination concerns, noting that minorities have high arrest rates but not necessarily charges filed. The company argued that fingerprinting would best be used as a supplemental tool to the background check methods currently in use and not as a stand-alone search criteria. The cost of introducing fingerprinting into the background check process would also need to be weighed against potential benefits given the concerns raised by the company.

- And finally, the PUC review recommended that Uber more fully document and formalize its internal policies and procedures – resulting in a clearer understanding of key functions, such as the onboarding process for new drivers.

TNC service in Pennsylvania has been a game changer for both consumers and transportation providers, and the Commission remains committed to ensuring that the service is provided safely. As part of that ongoing effort the PUC Bureau of Audits has tentative plans to conduct a review for the Pennsylvania operations of Lyft (similar to the recently released review of Uber), currently targeted for the 4th quarter of 2019.

While drivers have expressed dissatisfaction with their working conditions, the National Labor Relations Board has recently ruled that drivers for ride-hailing companies

like Uber and Lyft are contractors and not employees. Typically labor relations issues are outside the scope of PUC oversight of utilities.<sup>5</sup>

Note, too, that in terms of funding, the PUC assesses TNCs in the same manner as other passenger carriers, including taxicab companies, and the assessments are placed in a restricted fund which are reserved for the use of the PUC to cover the cost of the regulating those entities. This is very different from the Philadelphia Parking Authority's method of funding its oversight.

I appreciate the opportunity to testify today and would be happy to address any of your questions.

---

<sup>5</sup> May 14, 2019. *See also, Razak v. Uber Tech., Inc.*, No. 16-573, 2018, 2018 U.S. Dist. LEXIS 61230, 2018 WL1744467)(drivers are independent contractors).