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**M E M O R A N D U M**

January 9, 2017

**TO:** Interested Persons

**FROM:** Caitlin Del Collo, Constituent Services Analyst, 303-866-3687  
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**SUBJECT:** Regulation of Carrier Services and Transportation Network Companies

**Summary**

This memorandum summarizes the Public Utilities Commission's (PUC's) authority to regulate passenger carrier services and transportation network companies (TNCs). Specifically, this memorandum discusses PUC regulations concerning common, contract, and limited regulation carriers, including market-entry requirements for these carrier services, and provides an overview of TNCs and how they are regulated by statute and the PUC.

**Overview of Passenger Carrier Service Regulation**

The Public Utilities Commission (PUC) in the Department of Regulatory Agencies regulates passenger carriers, such as taxis, shuttles, and charter buses, and transportation network companies. Specifically, the PUC regulates the following types of vehicular passenger carriers:

- **Common carriers:** a person who provides a means of transportation or related service in a vehicle that indiscriminately carries passengers for compensation (i.e. taxis);
- **Contract carriers:** a person who provides a means of passenger transportation over any public highway in the state with a special contract (i.e. hotel shuttles);
- **Limited regulation carriers:** includes charter scenic buses, luxury limousines, children's activity buses, and fire-crew transport; and
- **Transportation network companies (TNCs):** Uber and Lyft are currently permitted to operate in the state.

For all types of carriers and TNCs, the PUC has the authority to promulgate rules and take enforcement actions, including assessing fines for violations. Additionally, each type of service is subject to safety, insurance, and operational standard oversight by the PUC. As a part of this oversight, the PUC requires vehicle inspections and insurance liability certificates before allowing carriers to operate. The PUC has adopted many of the federal safety regulations as prescribed by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration in the areas of driver qualifications, vehicle identification, vehicle requirements, hours of service, and recordkeeping.

**Types of oversight.** According to PUC regulations, common and contract carriers are considered public utilities and affect the public interest, so they are also subject to the regulation of rates, routes, services, and market entry, in addition to insurance and safety requirements. Limited regulation carriers and TNCs are deemed to affect the public interest, but are not a public utility. Therefore, they are not subject to regulation of their rates, routes, or services. Table 1 shows the level of PUC oversight for each type of carrier.

**Table 1  
Level of PUC Oversight by Carrier Type**

Type of Carrier	Type of Oversight						
	Safety	Insurance	Operational Standards	Rates	Routes	Services	Market Entry
Common	X	X	X	X	X	X	X
Contract	X	X	X	X	X	X	X
Limited Regulation	X	X	X				
TNCs	X	X	X				

Source: Public Utilities Commission.

### Common Carrier Regulation

Colorado law defines a common carrier as a person who provides a means of transportation or a related service in a vehicle that indiscriminately carries passengers for compensation.<sup>1</sup> This category includes taxis, scheduled services, shuttles, charters, and sightseeing services. Any person, partnership, or corporation seeking permanent authority to operate as a common carrier, or wishing to extend its authority, must file an application with the PUC. As public utilities, these carriers are subject to the broadest regulation, including but not limited to: rates, quality of service, insurance, vehicle safety, driver safety, and recordkeeping.

**Service standards.** According to the PUC's rules, a common carrier must:

- operate its motor vehicles only within a time schedule approved by the PUC;
- file an annual report with the PUC;
- accept MasterCard and Visa credit cards;
- operate vehicles that are not older than 12 model years old and in good physical condition with a clean interior with no major tears, cracks, or stains on the upholstery, headliner, or carpeting;
- transport any passenger unless the passenger is acting in an unlawful, disorderly, or endangering manner; and
- behave courteously.<sup>2</sup>

<sup>1</sup>Section 40-1-102 (3), C.R.S.

<sup>2</sup>4 CCR 723-6 (6208-6215).

***Taxicab market-entry requirements.*** Applicants wishing to enter the taxicab market in Colorado have different entry standards based upon where they wish to operate.<sup>3</sup> For operation in counties outside the Denver metro area with populations greater than 70,000 (currently Larimer, Mesa, and Weld Counties), taxicab companies are subject to "regulated competition," whereby applicants must show operational, managerial, and financial fitness; an unmet public need for the proposed service; and that the proposed service is not detrimental to the incumbent carrier. If a party opposing the application proves that the additional authority will result in destructive competition, the application must be denied.

The doctrine of "modified regulated competition" governs taxicab service in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson. Following the passage of House Bill 15-1316 in the 2015 legislative session, which removed the requirement of proving public need for the service under modified regulated competition, an applicant that wishes to operate in one of these counties only needs to prove that it is operationally and financially fit to provide the proposed service.

The "regulated monopoly" doctrine governs taxicab service in the remaining 52 counties of the state, each with populations of less than 70,000. Additionally, this standard currently governs all other call-and-demand and scheduled services statewide. Under regulated monopoly, service is authorized based upon unmet public demand. Incumbent providers are entitled to protection from new competitors so long as they stand ready, willing, and able to adequately serve public demand. A new entrant must prove a public need and that existing services are substantially inadequate before being granted entry. This is the highest entry barrier for carriers under existing law.

***PUC processing of applications.*** Many steps are involved in processing common carrier applications. Each application must be reviewed with the applicant to ensure the applicant is applying for the appropriate service. After receiving an application, the PUC is required to provide incumbent carriers with notice of the application. If no interventions are filed by existing carriers, the uncontested applications are administratively dealt with by the PUC in its weekly meeting. At the weekly meeting, a decision is rendered, which normally grants the applicant authority. The authority is, however, not issued until the applicant complies with requirements within the written decision. Compliance requirements include: insurance; stamps; and tariff and time schedules (if applicable).

If an existing common carrier intervenes in the application, the contested application is resolved via a fully adjudicated proceeding. The PUC must then assign a judge to hear and decide the case. A court reporter is assigned to record the hearing, and staff experts may participate in a hearing to ensure a complete record. When staff participate, they are represented by counsel. A judge's decision may be appealed to the PUC. In these instances, the PUC must review the hearing record, with advisory staff and counsel assigned to assist the PUC in making its decision on the review. Upon completion of the review, a decision is written and issued. PUC decisions may be appealed to an appropriate court. When a decision is appealed, counsel must represent the PUC before the court. A recommended decision may become a PUC decision, or it may be appealed to the Colorado Supreme Court.

***Certificate of Public Convenience and Necessity.*** Following a successful application to provide common carrier service, the PUC issues a Certificate of Public Convenience and Necessity (CPCN), which is considered a property right. These certificates obligate their holders

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<sup>3</sup>Section 40-10.1-203, C.R.S.

to indiscriminately serve the public need. The authority issued by the PUC specifies the type of service to be provided and the geographic area to be covered.

### **Taxicab-Specific Regulation**

Under PUC rules, a taxicab carrier means a common carrier with a certificate authorizing service by taxicab. A taxicab is defined in statute as a motor vehicle with a capacity of eight seats or less, including the driver, which is operated on a call-and-demand basis.<sup>4</sup> Taxicab carriers are subject to several additional regulations that do not apply to other types of common carriers, including rules regarding:

- the route they must take to the passenger's destination;
- multiple-loading of passengers;
- how charges and rates are posted within the vehicle;
- hours of operation;
- the area in which they can operate; and
- how they keep records.<sup>5</sup>

PUC rules have additional requirements for taxicab carriers depending on where they operate. Taxicab carriers that operate within or between counties with a population density of 40 or more people per square mile are subject to two additional regulations. Based on the 2010 census, these counties currently include Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, Summit, Teller, and Weld Counties. According to population forecasts by the Department of Local Affairs, this list may also include Eagle, Gilpin, and La Plata Counties after the 2020 Census. These taxicab carriers must:

- provide service 24 hours per day, every day of the year; and
- not use taxicabs older than ten model years.

Taxicab carriers that operate between or within Arapahoe, Adams, Boulder, Broomfield, Denver, El Paso, and Jefferson Counties must:

- provide service 24 hours per day, every day of the year;
- not use taxicabs older than eight model years;
- lock out drivers who exceed on-duty hours;
- provide a central phone number to the public; and
- use a GPS-based, digital dispatch system that tracks drivers.

The five cab companies that provide taxi service in the Denver metropolitan area are Metro Taxi, Yellow Cab, Union Taxi Cooperative, Freedom Cab, and Mile High Cab. Taxicab services are also available in 29 other municipalities, including Boulder, Colorado Springs, Fort Collins, Grand Junction, and Pueblo.

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<sup>4</sup>Section 40-10.1-101 (18) and (19), C.R.S.

<sup>5</sup>4 CCR 723-6 (6250-6258).

## **Contract Carrier Regulation**

Colorado law defines a contract carrier as a person who provides a means of passenger transportation over any public highway in this state with a special contract.<sup>6</sup> An example of a contract carrier is a shuttle that has a contract with a hotel to transport its guests to and from the airport under which the hotel pays the shuttle for the service. The PUC issues contract carriers with a permit to perform services for a customer that are agreed to in advance.<sup>7</sup> They may not charge less than a common carrier would charge for the same service and cannot serve the general public. PUC contract carrier regulation is more limited in practice, but still includes: rates, quality of service, insurance, vehicle safety, driver safety, and recordkeeping. To enter the contract carrier market, the applicant must demonstrate that the proposed contracted service is unique and does not impair the efficient public service of an incumbent common carrier. If authority is granted, proof of insurance and a tariff must be filed before the permit is issued.

## **Limited Regulation Carriers**

Colorado law governs the PUC's role in the regulation of limited regulation carriers, which includes children's activity buses, charter scenic buses, luxury limousines, off-road charter services, and fire-crew transport.<sup>8</sup> All limited regulation carriers must obtain a permit from the PUC before they can operate. Through a permitting process that requires a vehicle inspection by a qualified mechanic, the PUC provides insurance and operational oversight, but does not regulate rates. A limited regulation carrier gives a potential rider an up-front estimate so he or she knows approximately how much the service will cost before agreeing to it. If a limited regulation carrier violates a rule or the terms of its permit, the PUC may take civil action against the carrier.<sup>9</sup>

## **Transportation Network Companies Regulation**

In June 2014, Colorado became the first state to enact a law regulating on-demand transportation network companies (TNCs).<sup>10</sup> Unlike the taxicab industry, TNCs rely solely on a digital network service to connect riders to drivers. Drivers use their personal cars for fares and connect with passengers via a smartphone application.

TNCs and traditional passenger carrier companies vary in a number of ways. Unlike taxicabs, TNCs do not accept cash — the smartphone application is the method by which a passenger requests a ride and provides payment. Once the request is submitted via the application, nearby drivers are notified. TNC meters start running when a passenger enters the vehicle. Fares are automatically calculated by the application and charged to the passenger's credit card. Receipts are emailed to passengers and include a fare breakdown. TNCs are also able to set their own rates, as opposed to taxis, which have their rates set by the PUC.

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<sup>6</sup>Section 40-10.1-101 (6), C.R.S.

<sup>7</sup>Section 40-10.1-202, C.R.S.

<sup>8</sup>Section 40-10.1-301, C.R.S.

<sup>9</sup>Section 40-10.1-302, *et seq.*, C.R.S.

<sup>10</sup>Section 40-10.1-601, *et seq.*, C.R.S.

**TNC requirements.** Senate Bill 14-125 created a limited regulatory structure for TNCs, under which TNCs are exempt from the regulation for common carriers, contract carriers, and motor carriers, but must be permitted by the PUC and meet certain requirements. These requirements include:

- filing a certificate of insurance with the PUC for at least \$1 million in primary liability coverage per occurrence for incidents occurring while a network driver has a rider;
- conducting a safety inspection of a prospective driver's vehicle before it is approved for use, and of approved drivers' vehicles at least once a year, on forms approved by the PUC; and
- overseeing drivers as outlined in the section below.

Both Uber and Lyft have filed and received permits to operate in Colorado.

**Driver requirements.** TNCs must obtain a criminal history record check for each driver, but do not need to use the PUC's fingerprint-based check. Additionally, companies must review a prospective driver's driving history report. Individuals with certain convictions and moving violations are barred from working for TNCs. Further, TNCs must require drivers to maintain a personal automotive liability insurance policy that recognizes the driver is in a TNC.

A driver must be 21 years of age and may not drive for more than 12 consecutive hours. A TNC must require its drivers to display an exterior marking indicating that the vehicle is for hire; however, the driver may not provide services unless the TNC has matched the driver to a rider — in other words, hailing is not permitted. Once matched to a rider, a TNC driver must provide service regardless of race, ethnicity, gender, sexual orientation, gender identity, or disability. A rider's mobility equipment must be stored in the vehicle for the duration of the ride unless no storage is available. In that instance, the driver must refer the rider to another driver with a vehicle that can accommodate the mobility equipment. A driver cannot refuse to transport a passenger, except when the passenger is acting in an unlawful or disorderly manner; the passenger is unable to care for himself or herself and is not in the charge of a responsible companion; or the driver has already committed to providing a ride to another passenger. Violations of these requirements are subject to a maximum of \$550 in civil penalties.

**PUC regulation of TNCs.** Under statute, the PUC may also promulgate rules concerning administration, fees, safety requirements, and financial responsibility requirements. Final PUC rules that became effective January 30, 2016, address, among other things: safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a motor carrier; insurance and permit requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; recordkeeping; and service standards.

The PUC may take an enforcement action against a TNC that fails to comply with a PUC order, decision, or rule. The TNC is subject to a penalty of up to \$11,000 per offense depending on the violation. The PUC may not assess a penalty against a TNC driver.