September 13, 2024

Re: Fall Rulemaking 2024 – Implementation of Senate Bill 24-075

Dear Director Moss:

I write to you on behalf of Rasier, LLC ("Rasier"). Rasier is a licensed Transportation Network Company ("TNC") and a subsidiary of Uber Technologies, Inc. ("Uber") that contracts with independent drivers who receive ride requests through the Uber platform. Rasier submits these comments regarding the implementation of the transparency requirements and deactivation and suspension procedures of Senate Bill 24-075 ("SB 24-75"), codified at Colorado Revised Statutes (C.R.S.) Title 8, Article 4 (2024), C.R.S. § 8-4-127. Rasier has a number of questions it believes would benefit from clarification in the rulemaking. Additionally, because this is the first time that the Colorado Department of Labor and Employment (CDLE) has regulated a TNC, Rasier offers context and background information regarding the technological requirements for implementation.

<u>Questions & Clarifications</u>

C.R.S. § 8-4-127(1)(e) and (o) - Definitions.

SB-75 defines "deactivation" and "suspension" to mean "conduct that a TNC engages in to block or restrict a driver's access to the digital platform for a period of" more than or less than seventy-two hours respectively. However, there are categories of loss of platform access where the duration cannot be known by the TNC at the time or that are not directed at a specific driver.

First, there are instances of platform access loss that are fully in the driver's control. For example, drivers are regularly notified in advance that certain documents, such as proof of insurance, are about to expire and are provided instructions as to how to update those. If a driver does not upload the new insurance document in advance of expiration, a TNC might estimate that the subsequent loss of access will be limited to less than 72 hours. Characterizing such a loss as a "deactivation" that requires a process for "reconsideration" when the driver is already on notice of how to remedy the issue approaches nonsensical.

Instead, Rasier recommends that the definition of "suspend" or "suspension" include any loss of access to the digital platform, regardless of duration, that is contingent on a driver's compliance with licensing, insurance, or regulatory requirements or that can be resolved through unilateral action by the driver.[1] In these circumstances, it does not make sense to impose a temporal element that triggers a reconsideration process.

Second, drivers may lose platform access due to reasons unrelated to the action or behavior of the individual driver, such as technology outages. Rasier recommends further defining "suspend" or "suspension" to include as follows:

> Loss of platform access lasting less than 72 hours when the platform is unavailable to a driver due to reasons unrelated to the action or behavior of the driver and that are clearly communicated to the driver at the time of the suspension. Such reasons include but are not limited to: technology, software, or network outages; account access or security issues; routine maintenance; and inclement weather endangering the safety of drivers in performing services in Colorado. If the conditions giving rise to such reasons persist beyond 72 hours, the TNC must regularly communicate to the driver the existence of the suspension and the reason for the suspension.

C.R.S. § 8-4-127(3)(a)(IV) - Deactivation reconsideration.

SB-75 seems to suggest that every deactivation should have a process for internal reconsideration by the TNC, but there are scenarios where an internal process for review is inappropriate because the deactivation is outside of the TNC's control. For example:

- *Regulatory requests* – The Colorado Public Utilities Commission (PUC) sometimes asks TNCs to remove a driver's platform access for the duration of an enforcement investigation or permanently. A TNC has no discretion in such an instance.

- *Failing a background check* – Background checks are conducted by third parties and if it returns that a driver does not satisfy the state's regulatory requirements, there is no remedial action a TNC can take.

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[1] *See* Laws of Minnesota 2024, chapter 127, article 17, section 2, https://www.revisor.mn.gov/laws/2024/0/Session+Law/Chapter/127/2024-08-09%2008:14:50+00:00/pdf (definition of "deactivation").

To address this discrepancy, Rasier respectfully requests that:

1. CDLE consult with PUC to establish a policy stating the specific circumstances under which PUC's enforcement agents may ask a TNC to block a driver's access;

2. CDLE consider exempting TNCs from providing a reason for a suspension or deactivation whenever a TNC is required by law to block a driver's platform access;

3. CDLE provide guidance as to the types of deactivations that do not require internal reconsideration procedures by the TNC, including regulatory requests, background check failures, and other instances where a driver is in violation of any of the applicable requirements in C.R.S. § 40-10.1-601 *et seq.* or 4 C.C.R. 723-6-6700 *et seq.*; and

4. CDLE clarify that not all deactivations require internal reconsideration procedures by the TNC so long as:
    a. The TNC's deactivation and suspension policy states which deactivation reasons have internal reconsideration procedures and which ones do not; and
    b. The deactivation notice otherwise complies with the requirements of C.R.S. § 8-4-127(4)(b).

C.R.S. § 8-4-127(3)(b)(III) - Additional languages.

The director is empowered to require TNCs to make their deactivation and suspension policies available in "up to three additional languages commonly spoken by TNC drivers in the state." Should the director determine that policies be made available in additional languages, Rasier requests an implementation timeline of at least 180 days after the rule's effective date to allow for additional translations given the time and resource demands needed to make these changes.

C.R.S. § 8-4-127(9) - Semiannual disclosures to the division.

TNCs are required to disclose certain information "[o]n August 1, 2026, and on a semiannual basis thereafter." Rasier has two questions and clarifications about this section.

First, the law does not define "reporting period." Rasier recommends that the reporting periods be (a) January 1 through June 30, with the semiannual report due on August 1 (or the next business day), and (b) July 1 through December 31, with the semiannual report due on February 1 (or the next business day).

Second, Rasier requests that CDLE provide the TNCs with a data dictionary with the format in which the data is to be provided and the assumptions needed to be made. For example,

§ 8-4-127(9)(a) requires TNCs to provide "[t]he number of driver deactivations during the reporting period." Would this include drivers who were deactivated and then reinstated after appeals? How are drivers who experience multiple deactivations during the reporting period treated – does CDLE want unique deactivation events or total number of drivers that experienced deactivation(s)?

Rasier further requests that the data dictionary is published at least 3 months prior to the end of the first reporting period. Similarly, should there be changes in the future, Rasier requests any new data dictionary be published at least 3 months prior to the end of the reporting period to which it will apply.

C.R.S. § 8-4-127(11)(f)(V) - IRS business mileage deduction.

Rasier has two questions regarding the requirement that TNCs provide, at least monthly, "the total amount the driver may be entitled to deduct from income calculated using the IRS business mileage deduction rate for all miles known to the TNC to have been driven during the driver's: (A) Available platform time; (B) Dispatch platform time; and (C) Consumer platform time."

First, because all miles are treated the same for purposes of the IRS business mileage deduction, can CDLE confirm that TNCs are permitted to provide one total amount potentially eligible for deduction taking the miles driving for C.R.S. § 8-4-127(11)(f)(V)(A)-(C) together?

Second, Rasier requests that CDLE account for the periodic updates to the IRS business mileage deduction rate in a way that works for both drivers and TNCs. Historically, the IRS publishes the new rates in the second half of December:

- 2024: December 14, 2023[2]
- 2023: December 29, 2022[3]
- 2022: December 17, 2021[4]

Rasier notes, however, that in 2022, the IRS made a midyear adjustment on June 9 that applied to the period of July 1 through December 31, 2022.[5] Although the IRS acknowledges that

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[2] IRS, *IRS issues standard mileage rates for 2024; mileage rate increases to 67 cents a mile, up 1.5 cents from 2023*, IR-2023-239 (Dec. 14, 2023), https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2024-mileage-rate-increases-to-67-cents-a-mile-up-1-point-5-cents-from-2023.

[3] IRS, *IRS issues standard mileage rates for 2023; business use increases 3 cents per mile*, IR-2022-234 (Dec. 29, 2022), https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2023-business-use-increases-3-cents-per-mile.

[4] IRS, *IRS issues standard mileage rates for 2022*, IR-2021-251 (Dec. 17, 2021), https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022.

[5] IRS, *IRS increases mileage rate for remainder of 2022*, IR-2022-124 (June 9, 2022), https://www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022.

such midyear adjustments are rare,[6] even a disclosure as late as 2023's—occurring on the penultimate business day of 2022—can make correct implementation difficult. Therefore, Rasier makes two clarifying requests:

1. An explicit sanctioning that the disclosure required in C.R.S. § 8-4-127(11)(f)(V) may be made as late as the final day (or next business day) of the following month. For example, the disclosure required for January may be made on the last day of February (or next business day).

2. A 90-day stay after the effective date of a new IRS business mileage deduction rate for any enforcement action regarding timeliness or substantive correctness of the information required to be disclosed at C.R.S. § 8-4-127(11)(f)(V). A very late annual update, such as what occurred for 2023, or an unexpected midyear adjustment, such as what occurred in 2022, could mean a delay in system updates.

Background

Tech development

Rasier appreciates that CDLE has never before regulated an app-based platform in this manner. We, therefore, would like to provide a broad introduction to the process of product development and the implementation of product changes to help inform CDLE's rulemaking.

Uber builds tech at a global level for our customers across multiple devices; a change to one part of the app experience is never made in a vacuum. For example, the new information required at C.R.S. § 8-4-127(11)(d), which must be displayed in compliance with the requirements at C.R.S. § 8-4-127(11)(e), is not just a matter of adding lines of information in a larger font size. From a design perspective, the new requirement changes adjustments not only to size and style, but must also account for different means of access (e.g., app vs. browser), different devices (e.g., mobile phone vs. tablet vs. computer), and different operating systems (e.g., iOS vs. Android).

After design is complete and the user experience is confirmed, the changes must then actually be built and undergo rigorous testing. Although a new requirement may appear simple, it can take months of work across multiple teams. Overly prescriptive regulations as to the method and format in which TNCs provide the information required by a law can be excessively burdensome to the TNCs.

[6] *Id.* (stating that, prior to 2022, the last time the IRS made a midyear adjustment was 2011).

Upon SB-75's finalization this spring, Uber began promptly identifying the technological changes needed and building a plan to meet the February 1, 2025 deadline for the new transparency requirements. However, CDLE should note that Colorado is not the only state requiring bespoke changes this year, and the February 1 deadline for fundamental redesigns of some core features is already challenging.

If CDLE introduces new technological requirements, Rasier respectfully requests that the effective date of the new requirements be no sooner than February 1, 2026. Additionally, if the technological changes already scheduled to be implemented by TNCs by February 1, 2025, are unsatisfactory to CDLE, Rasier respectfully requests a minimum six-month stay of enforcement to provide the TNCs sufficient time to implement any changes.

SB-75's data contemplation

SB-75, as written, provides ample information for drivers to have visibility into their earnings and any rule should avoid placing additional, onerous requirements that are not contemplated by SB-75.

For example, the requirements of SB-75 demonstrate that the aim of the post-trip information to be provided to drivers is increased transparency of (a) a rider's per-trip fare and (b) the driver's net earnings on that same trip.[7] A prescriptive requirement to disclose the information mandated by C.R.S. § 8-4-127(11) in a format other than that stated in the law is unwarranted.

Additionally, individual drivers already receive all of the data necessary to assess earnings on a per-trip, as well as aggregated, basis. A driver's trip receipt includes, among other information, the driver's net earnings, any tip, and the duration and distance of that trip's consumer platform time.[8] SB-75 additionally requires that drivers receive, at least monthly, the total time and mileage spent in available platform time, dispatch platform time, and consumer platform time.[9] Drivers are provided all of the information they need to assess their earnings.

Lastly, SB-75 provides a clear mechanism for the compilation of data in the semiannual disclosure, thereby providing CDLE with information required for effective oversight. TNCs will provide the department with certain information for a sampling of transportation tasks, to include mileage, time, rider fare, and driver earnings.[10] Moreover, this information is considered a

[7] *See* C.R.S. § 8-4-127(11)(b), (c), and (e) (requiring a TNC to display to a driver, and then provide via email or other accessible mechanism, and prominently using eye-catching design techniques: (i) rider fare, (ii) net driver earnings, and (iii) the amount of tip, if any).

[8] "'Consumer platform time' means the period of time when a driver is transporting one or more consumers or riders on a ride." C.R.S. § 8-4-127(1)(d)(I).

[9] C.R.S. § 8-4-127(11)(f)(III)-(IV).

[10] C.R.S. § 8-4-127(9)(d)(II)(C), (D), (F), (I), (J), and (K).

"public record" and subject to disclosure under the Colorado Open Records Act.[11] Coloradans, whether they are government officials, everyday citizens, or app-based workers, will all have ample ability to analyze the economics of driving.

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Rasier appreciates your consideration of these comments. Should you have any questions, please contact me at

[11] C.R.S. § 8-4-127(10).