

## **Lyft, Inc.’s Comments on the Proposed Rules to Implement the Transportation Network Company Transparency Act, C.R.S. § 8-4-127**

Lyft, Inc. (“Lyft”) welcomes the opportunity to submit comments on the Transportation Network Company Transparency Act, C.R.S. § 8-4-127, and the Delivery Network Company and Transportation Network Company (“TNC”) Acts Labor Rules (the “Proposed Rules”) (7 CCR 1103-19), proposed by the Department of Labor and Employment Division of Labor Standards and Statistics (the “Division”) on September 30, 2024 that was scheduled for a hearing on October 30, 2024.

Lyft supports transparency and choice when it comes to driver earnings. Indeed, since 2022, drivers using Lyft’s platform could utilize “upfront pay,” a tool that previews ride information, including, for instance, the fare, pickup and drop-off locations, estimated time and distance, and a map view of the full ride. To further support drivers, Lyft encourages riders to tip drivers including through in-ride tipping, which allows a tip before the ride ends. C.R.S. § 8-4-127 could cause Lyft to disable in-ride tipping, which will likely reduce driver earnings in Colorado. In addition, C.R.S. § 8-4-127 is ambiguous as to the definition of “deactivation,” and creates privacy concerns about the release to driver personal information. Therefore, Lyft respectfully submits the following recommendations for consideration by the Division.

### **I. The Proposed Rules Could Cause Lyft to Eliminate In-Ride Tipping**

Lyft currently allows Colorado riders to tip a driver before the ride ends. Indeed, C.R.S. § 8-4-127(11)(a)(V) expressly contemplates in-ride tipping - as this only supports driver earnings - given the language noting: “At the time of offering a transportation task to a driver for acceptance, a Transportation Network Company shall electronically disclose to the driver: (V) If the consumer has already indicated a tip amount, the amount of the tip.” However, this language seemingly contradicts the separate requirement that the TNC disclose to the rider the total amount of money the driver will receive for the ride “*before any tip is added.*” As the Division acknowledged during meetings on C.R.S. § 8-4-127, the timing of driver earning disclosures come with safety considerations. If a rider knows the amount a driver will receive before or during a ride it potentially encourages unauthorized, uninsured rides. Therefore, Lyft urges the Division to interpret the Proposed Rule to mean “calculated exclusive of tipped amount” instead of “before any tip is added.” Otherwise, Colorado could become the only U.S. market where Lyft does not offer this service to drivers using its platform. Given the amount of tips drivers in Colorado currently receive, Lyft estimates losses of hundreds of thousands of dollars in lost tips following implementation of the Proposed Rules.

Importantly, requiring disclosure of driver earnings at the outset of a ride, fails to allow for a change in market conditions. A variety of factors could increase the cost of a ride, including a change in traffic conditions, or the inclusion of additional stops that could lengthen the ride,

thereby impacting the driver's earnings in a manner that contradicts the amount disclosed to the driver and rider at the beginning of the ride. To comply with C.R.S. § 8-4-127(11)(a)(II) (while still discouraging unauthorized rides and providing accurate earnings disclosures), Lyft would have to provide the driver earnings disclosure after the ride ends, thereby eliminating the ability to provide in-ride tipping.

## **II. “Deactivation” Is Ill-Defined**

C.R.S. § 8-4-127 broadly defines a “deactivation” as blocking or restricting a driver's access to the TNC platform for “seventy-two hours or more.” In addition, the Bill requires that TNCs “clearly list the circumstances that constitute a violation that may warrant deactivation or suspension ... and indicate the specific consequences for each listed violation...” Lyft submits that the definition of “deactivation” and the resulting disclosure requirements are not workable.

There are many reasons a driver might lose access to Lyft's platform, and the duration of the necessary investigation may ultimately depend on myriad factors. For instance, a DMV check could highlight a driver with a driver's license that is now invalid, and pursuant to Colorado's TNC regulations Lyft must deactivate that driver. However, the duration of the deactivation is within the driver's control — not Lyft's, as the driver must resolve the issue with the DMV. Similarly, Lyft would deactivate drivers who fail to update their insurance or vehicle inspection documents. Lyft already communicates to the driver the reason for the deactivation, but Lyft cannot predict how long the driver will take to resolve the issue.

Lyft submits that the Division should revise the definition of “Deactivation” to limit it to only those deactivations within the sole discretion of the TNC, such as those related to trust and safety issues, ratings, etc. This would also eliminate the need for unnecessary deactivation reconsideration proceedings. If the deactivation reason is outside of the TNC's control (such as a failed background or DMV check), there is no utility to a separate internal reconsideration process that cannot override legally-required deactivations. Likewise, if the deactivation reason is solely within the driver's control (e.g., failure to provide required documentation), the appeals process will only serve as a tool to provide the driver the same information the TNC already noted.

## **III. The Proposed Rules Exceed C.R.S. § 8-4-127's Definition of “Demographic Information”**

C.R.S. § 8-4-127 requires TNCs to make a semiannual disclosure to the Division reflecting the number of deactivations and deactivation reconsiderations. For each relevant driver, the TNCs must disclose the driver's “demographic information,” defined as “gender and gender identity and the default language the driver has selected in the TNC's digital platform.” C.R.S. § 8-4-127(9)(c).

However, Proposed Rule 6.2.2.(B) exceeds this language, and defines “demographic information” to include “personal characteristics” and personally identifiable information such as “driver’s license number” and “race or ethnicity, age, gender and gender identity.” Since this is beyond the authority permitted by C.R.S. § 8-4-127(9)(c), Lyft respectfully requests that the Division revise Proposed Rule 6.2.2.(B) to align with the relevant authority in order to protect the personal identifiable information of drivers.

#### **IV. The Proposed Rules Should Be Amended for Privacy Protection Reasons**

As noted above, the disclosures required by C.R.S. § 8-4-127 will contain drivers’ personal identifiable information as well as TNC trade secrets and other proprietary information. Lyft respectfully requests that the Division update the Proposed Rule to include the below language, which is intended to provide appropriate protection for this sensitive information.

Disclosures to the Division containing personal identifiable information (“PII”) including but not limited to: Any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that directly identifies an individual (e.g., name, address, Social Security number or other identifying number or code, telephone number, email address, etc.) or (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. (These data elements may include a combination of gender, race, birth date, geographic indicator, or other descriptors). Additionally, information permitting the physical or online contact of a specific individual is the same as personal identifiable information; shall be exempt from public disclosure.

Disclosures to the Division containing trade secrets or confidential commercial or financial information, including but not limited to: secret, commercially valuable plan, formula, process, or device that is used for marketing, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort; shall be exempt from public disclosure.

In the event of a request to the Division for disclosure of such information, the Division will advise the TNC to which the request relates within five (5) days of receipt and will provide the TNC

with the opportunity to object to the disclosure of any material the TNC may consider confidential, proprietary, or otherwise exempt from disclosure. Notice to the TNC must be provided prior to any public disclosure.

Finally, Lyft notes that the Proposed Rules are silent on the format by which the disclosures are to be made. Given the sensitivity and the volume of information that will be disclosed, Lyft respectfully requests that the Division amend the Proposed Rules to clarify that TNCs may provide the disclosures in CSV files and via secure file transfer methods.

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Lyft greatly appreciates the Division's consideration of these comments and looks forward to partnering together to craft a workable regulatory framework.