

Commission (“Staff”), and Yellow Transportation, Checker Cab, and Execucar (“Yellow”) (collectively, the “Parties”).³

Both Rasier and Lyft filed supporting testimony with their respective Petitions. Rasier filed the direct testimony of: Shawn D. Bushway, Professor of Criminal Justice and Professor of Public Administration and Policy at the University at Albany, State University of New York; Boniface Idziak, Chief Compliance and Government Relations Officer at Accurate Background, Inc. and former Head of Government Relations and Compliance at Checkr, Inc. (“Checkr”); Glenn F. Ivey, Former State’s Attorney for Prince George’s County, Maryland and Former Assistant United States Attorney in Washington, D.C.; Michael Pinard, Professor and Co-Founder/Co-Director of the University of Maryland Frances King Carey School of Law’s Reentry Clinic; Annaliese Rosenthal, General Manager of Uber for Maryland, Virginia, and the District of Columbia; and Joe Sullivan, Chief Security Officer at Uber.⁴ Lyft filed the direct testimony of Angela Preston, Senior Vice President and Counsel, Corporate Ethics and Compliance for Sterling Talent Solutions (“Sterling”) and Thomas C. Frazier, CEO of Frazier Group, LLC.⁵

On October 25, 2016, Yellow submitted the direct testimony of Pasqualino Russo, Partner at Windels Marx Lane & Mittendorf, LLP and Adjunct Assistant Professor in the Masters in Public Administration – Inspector General Program at John Jay College of Criminal Justice of the City University of New York.⁶ Also on October 25, 2016, Staff

³ On October 11, Rasier filed a motion opposing Yellow’s petition to intervene. Case Item Nos. 7 and 8. On October 12, 2016, the Commission granted Yellow’s petition to intervene. Case Item 13.

⁴ Case Item No. 1.

⁵ Case Item No. 2.

⁶ Case Item No. 16.

submitted the direct testimony of: Christopher T. Koermer, Director of the Transportation Division; Regina C. Gee, Assistant Director of Transportation; and Carole Shelton and/or Robyn Lyles of the Maryland Department of Public Safety and Correctional Services (DPSCS) Criminal Justice Information System (CJIS) – Central Repository (CR).⁷ OPC did not submit testimony.

On November 2, 2016, Lyft filed a motion for leave to file direct testimony of Ian Portier, Regulatory Compliance Manager for Lyft, seeking to address Lyft’s internal processes in connection with background checks and enter Lyft’s waiver petition into evidence as an exhibit.⁸ On November 7, 2016, Staff filed a reply to Lyft’s motion and asked the Commission to deny Lyft leave to file Mr. Portier’s direct testimony, arguing that allowing Lyft to file direct testimony would be highly prejudicial to Staff and other parties who did not have an adequate opportunity to respond to it.⁹ Lyft replied to Staff’s opposition on November 10, 2016, offering that Lyft designate only three paragraphs of the petition that were identified by Staff’s motion as addressing “Lyft’s internal processes for identity verification in highly general form, found at pages 16-17.”¹⁰ On November 15, 2016, the Commission issued Order No. 87883, granting Lyft’s Motion for Leave to File the Testimony of Mr. Poirier in part, but limiting the portion of the petition sought to be offered into evidence to the three paragraphs on pages 16-17 upon which Mr. Poirier had personal knowledge.¹¹

⁷ Case Item No. 1.

⁸ Case Item No. 19.

⁹ Case Item No. 22.

¹⁰ Case Item No. 23.

¹¹ Case item No. 26.

On November 7, 2016, Staff submitted revised testimony for Regina C. Gee, removing certain documents that Staff included in redacted form as confidential exhibits but later determined should be removed to avoid the risk of violating certain statutory prohibitions regarding the use and dissemination of criminal history information received through CJIS.¹² Subsequently, on November 10, 2016, Rasier filed a Motion to Strike excerpts of the testimony filed by Regina C. Gee and Christopher T. Koermer, maintaining that because the excerpts relied on the exhibits Staff had withdrawn, the statements in the excerpts lacked any foundation, and were thus substantially more prejudicial than probative.¹³ Staff responded on November 12, 2016, maintaining that Ms. Gee and Mr. Koermer's experience with background check reports as well as other documents adequately supported their testimony, and pointed out that the Commission is not bound by the rules of evidence or procedure.¹⁴ After Rasier filed a reply to Staff on November 15, 2016¹⁵ and Staff replied again on November 17, 2016¹⁶ the Commission on November 18, 2016 granted Rasier's Motion to Strike, finding it fundamentally unfair to allow Staff to make comparisons between Rasier's background checks and CJIS background checks without giving Rasier the opportunity to examine the CJIS checks.¹⁷

On November 17, 18, and 21, 2016, evidentiary hearings were held for cross-examination of witnesses. On November 22, 2016, after all parties indicated they had no

¹² Case Item No. 21.

¹³ Case Item No. 25. Rasier further pointed out that although it had sought on two occasions to obtain copies of CJIS background reports from Staff, Staff declined to produce them, citing state and federal law as well as other reasons. *Id.*

¹⁴ Case Item No. 25.

¹⁵ Case Item No. 28.

¹⁶ Case Item No. 29.

¹⁷ Transcript ("Tr.") 480-481.

objection,¹⁸ Rasier¹⁹ and Lyft²⁰ both filed stipulations to extend the deadline by which the Commission must enter a final Order in Case No. 9425 to December 22, 2016.²¹

Also on November 22, 2016, Rasier and Lyft filed a Joint Motion to Strike certain portions of Ms. Gee's oral testimony that contained conclusions about the relative comprehensiveness and accuracy of the various background checks at issue on the basis that it would be fundamentally unfair to allow comparisons to be made about documents that neither Lyft nor Rasier had been able to review.²² On November 28, 2016, Staff replied, arguing that it was completely fair for Ms. Gee to provide her general impressions about the attributes of background checks based on her years of experience with the Commission, especially in response to questions from Lyft and the bench.²³ On December 2, 2016, the Commission denied the Joint Motion to Strike, finding several independent reasons to do so, including: Lyft's failure to timely object to the testimony; the fact that Ms. Gee's testimony concerned her general impressions of the two types of background checks, as opposed to side-by-side comparisons; and the fact that counsel for the Petitioners asked the questions that elicited the testimony, which was then repeated in substantially the same form in response to questioning from the bench.²⁴

The Parties filed post-hearing briefs on December 6, 2016. On December 9, 2016, Rasier filed a motion²⁵ to strike excerpts of Yellow's brief to which Yellow

¹⁸ Tr. 599-600.

¹⁹ Case Item No. 31.

²⁰ Case Item No. 30.

²¹ Both Rasier and Lyft stipulated that their petitions were deemed filed on September 22, 2016.

²² Case Item No. 32.

²³ Case Item No. 36.

²⁴ Case Item No. 37.

²⁵ Case Item No. 43.

responded on December 12, 2016.²⁶ Staff responded on December 13, 2016,²⁷ and Rasier filed a Reply on December 14, 2016.²⁸

II. POSITIONS OF THE PARTIES

A. Rasier's Position

Rasier begins its background check process by requiring its TNO applicants to submit electronically an image of the applicant's driver's license, photograph, address, email address, state of birth, vehicle insurance and registration, Social Security number, and bank account information.²⁹ Trained document verifiers review the documents, and if verified, Rasier's background check provider, Checkr, validates the social security number with Social Security Administration information and performs a social security trace to discover all names as well as dates of birth and address history associated with the social security number.³⁰ Checkr also searches a wide variety of commercially available databases to identify any other name variations and addresses, and if Checkr encounters any suspicious activity it does not resume its process unless and until the applicant resolves the issue with Rasier.³¹ An additional identity verification protocol occurs after the Checkr process and just before Rasier's daily passenger-for-hire services commence, via Rasier's newly deployed "Real-time ID Check" feature using facial matching technology to verify that the person offering to drive is who the person claims to be.³²

²⁶ Case Item No. 44.

²⁷ Case Item No. 45.

²⁸ Case Item No. 46.

²⁹ Direct Testimony of Joe Sullivan on behalf of Rasier, ("Sullivan Direct"), p.26-27.

³⁰ Brief of Rasier, LLC. ("Rasier Brief"), p. 18.

³¹ Direct Testimony of Boniface Idziak on behalf of Rasier, ("Idziak Direct") p. 10-13.

³² Tr. 248. In one recent month's time leading up to the hearing, Rasier asked about 7,500 of 10,000 of its Maryland drivers to verify their identities through the new Real Time ID Check protocol. *Id.*

Checkr, a credit reporting agency (“CRA”), obligated under the Fair Credit Reporting Act to follow reasonable procedures to assure the maximum possible accuracy of the background check it produces, is audited and accredited by the Background Screening Credentialing Council “(BSCC)” of the National Association of Professional Background Screeners (“NAPBS”).³³ Checkr’s background check involves a multi-state, multi-jurisdictional search of more than 1,700 data sources to identify any county where an applicant may have committed a crime.³⁴ Those sources include: court, inmate, and warrant records from state agencies; federal and state sex offender registries; national and international caution lists; and commercial criminal data repositories.³⁵ Researchers also search county records where the applicant lived or worked in the past seven years and any county that Checkr’s process reveals as indicating the possibility of a criminal history.³⁶

Rasier reruns its Maryland background checks and motor vehicle record checks every year.³⁷ Rasier monitors and keeps trip data and passenger feedback, and has a support team that investigates complaints, may deactivate a driver account, and interacts

³³ *Id.* at 18. To pass the audit, a CRA must demonstrate continued compliance with a comprehensive set of accreditation standards, including: “(1) maintaining auditing procedures for quality assurance in regard to Checkr’s 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 ensure the accuracy and quality of all work product. Compliance is demonstrated through rigorous desk and on-site audits, all of which are completed by an independent third-party auditor.” *Idziak Direct* p. 7-8.

³⁴ *Id.* at 15.

³⁵ *Id.*

³⁶ *Id.* at 10.

³⁷ *Tr.* 254-55.

with law enforcement.³⁸ Rasier does not require its deactivated TNOs to return their vehicle trade dress.³⁹

Rasier argues in its Brief that its commercial background check process is more comprehensive and accurate than the CJIS background check. Rasier first maintains that CJIS checks are substantially flawed and inaccurate, noting that fingerprint-based checks are inappropriate screens for work opportunities, and that the relevant government repositories are neither comprehensive nor accurate. Rasier then maintains that the background checks conducted by its third-party provider, Checkr, are more comprehensive and accurate than CJIS checks because Checkr: 1) solves flaws and gaps that are present in the CJIS process by searching more than 1,700 data sources and then confirming results from relevant court records; and 2) uses a process that accounts for all relevant crimes and dispositions.

Rasier further argues that it and Checkr authenticate identities rigorously through trained document review personnel and “Real-time ID Checks,”⁴⁰ and use updating and monitoring protocols such as annual background checks, rider feedback, and trip data that are more comprehensive and accurate than CJIS rap-back updates.⁴¹ Rasier maintains that it is able to automatically deactivate drivers as soon as it learns of information that reflects negatively on a driver’s fitness.⁴² Rasier concludes that granting a waiver fulfills

³⁸ Rasier Brief, p. 23.

³⁹ Staff Hearing Ex. 8.

⁴⁰ Joe Sullivan, on behalf of Rasier, testified that “Realtime ID Check” is a feature that randomly checks the driver’s photograph on file against a self-photograph (a “selfie”) taken by the driver immediately before being able to log-in to receive and accept ride requests. Sullivan Direct, p.25.

⁴¹ “Rap Back” refers to a process to notify agencies when a person who has previously provided fingerprints to CJIS for employment or licensing purposes has some type of subsequent criminal event. Direct Testimony of Carole Shelton and/or Robyn Lyles of the Maryland Department of Public Safety and Correctional Services Criminal Justice Information System– Central Repository , p. 7.

⁴² Tr. 170.

the Commission's oversight responsibility, and states that if the Commission requires fingerprinting, such a decision would lead to Rasier leaving Maryland, and would not be in the State's public interest.⁴³

B. Lyft's Position

Lyft's background check process begins when an applicant submits essential personal information – the applicant's phone number, vehicle information, social security number, full legal name, date of birth, driver's license number and state of issuance, driver's license expiration date, and residential address.⁴⁴ Lyft then retrieves the applicant's driving record and confirms that the name associated with that record matches the applicant's.⁴⁵ Next, an applicant must meet face-to-face with a Lyft representative, to whom they must present an original driver's license and insurance card.⁴⁶ The Lyft representative takes a photo of the applicant, the applicant's documentation and vehicle, and confirms that the driver's license appears to be genuine and matches the applicant and other documentation.⁴⁷ Images of the documents are then independently verified for a second time by other Lyft representatives before the applicant's information is forwarded to Lyft's background check provider, Sterling.

Sterling, a CRA obligated under the Fair Credit Reporting Act⁴⁸ to follow reasonable procedures to assure the maximum possible accuracy of the background check

⁴³ Rasier Brief, p. 24-26.

⁴⁴ Lyft Brief, p. 10.

⁴⁵ Tr. 425 -426.

⁴⁶ *Id.* at 429.

⁴⁷ Lyft Brief, p. 11-12.

⁴⁸ 15 U.S.C. § 1681(c)

it produces, is audited and accredited by the BSCC of the NAPBS.⁴⁹ To perform its background check, Sterling uses an applicant's name, social security number, and date of birth to search a variety of data sources,⁵⁰ beginning with a social security number trace that produces a 7-10 year history of past and present applicant addresses.⁵¹ Sterling uses those addresses to search criminal offenses at the county level, including every county in Maryland.⁵² Sterling also searches nationwide and federal databases for each applicant, including federal criminal records in the federal districts where the applicant has an associated address and the Department of Justice's sex offender registry.⁵³ Sterling also performs an "Enhanced Nationwide Criminal Search" to identify crimes that may have been committed outside the counties identified by the social security number trace, by searching millions of records from hundreds of data sources, which will trigger a full additional county-level search of any county that shows a criminal conviction but was not associated with a prior address.⁵⁴ Sterling also employs a database known as Locator Select to identify additional geographic locations for hits from over 3,500 booking and incarceration locations, and follows any additional hits with a county-level search.⁵⁵

⁴⁹ *Id.* at 18. To pass the audit, a CRA must demonstrate continued compliance with a comprehensive set of accreditation standards, including: "(1) maintaining auditing procedures for quality assurance in regard to Checkr's 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 ensure the accuracy and quality of all work product. Compliance is demonstrated through rigorous desk and on-site audits, all of which are completed by an independent third-party auditor." Idziak Direct, p. 7-8.

⁵⁰ The data sources include Social Security Number Trace; Enhanced Nationwide Criminal Search; Locator Select; United States Department of Justice Sex Offender Registry; County Criminal Records; and Federal Criminal Records. Direct Testimony of Angela Preston on behalf of Lyft ("Preston Direct"), p. 2-3.

⁵¹ *Id.* at 3.

⁵² *Id.* at 3-4.

⁵³ *Id.* at 4.

⁵⁴ *Id.*

⁵⁵ *Id.* at 5.

After Sterling’s background check results are reviewed for quality assurance and a final, verified report is issued,⁵⁶ a passing applicant must certify that all submitted documents are correct and complete, and that the applicant will comply with all “city, state, and federal ordinances, statutes, and regulations including those of the Maryland Public Service Commission.”⁵⁷

Lyft reruns its Maryland background checks and motor vehicle record checks every year, on the anniversary of the driver’s last background check.⁵⁸ Lyft drivers are subject to passenger feedback ratings, and Lyft’s trust and safety team also uses passenger feedback, which includes safety feedback, to investigate safety issues and potentially deactivate drivers.⁵⁹

In its Brief, Lyft argues that its use of third-party commercial background check provider, Sterling, is at least as accurate as CJIS checks, because its process employs multiple layers of authentication, including in-person verification of applicant identities with a government-issued photo ID prior to running the check. Lyft further maintains that because Sterling directly searches databases and records that CJIS checks do not, Sterling checks are capable of retrieving criminal history that a fingerprint-based check cannot, making them more comprehensive and accurate than CJIS checks, which Lyft maintains are incomplete and inaccurate because they primarily rely on criminal records that have been successfully associated with a fingerprint obtained at arrest, and because the national records provided by the FBI only include certain types of offenses and have suffered from reporting deficiencies by participating states.

⁵⁶ *Id.*

⁵⁷ Lyft Brief, p. 12-13.

⁵⁸ Yellow Hearing Ex. 7.

⁵⁹ *Id.*

Lyft also argues that the continuous criminal history updates provided by CJIS are of limited utility because they are limited to Maryland, do not include traffic convictions, and almost never result in dispositive action against a licensee until an individual is convicted. Lyft maintains that its annual background checks, supplemented by immediate suspensions upon reports of violations of Lyft policies or drug or alcohol use, as well as multiple forums for feedback on driver conduct, render Lyft able to respond more nimbly than Staff to issues bearing on its drivers' fitness to serve the public. Lyft also maintains that the seven-year limitation on its look-back for criminal history is required by the Federal Credit Reporting Act ("FCRA") and the Maryland Consumer Credit Reporting Agencies Act ("MCCRA"), and as such has been endorsed by the General Assembly and should not be a basis for rejecting its petition for a waiver. Lyft further offers that the Commission could condition approval of a waiver to require notification of any switch in providers and require any credit reporting agency providing checks to be accredited by the Background Screening Credentialing Council or a similar organization using equivalent standards.⁶⁰

C. Staff's Position

Staff argues in its Brief that neither Lyft nor Rasier has demonstrated that its background checks are as comprehensive and accurate as the CJIS check. Staff maintains that the applicants provided no analysis of the accuracy and comprehensiveness of their checks – specifically, no information regarding the comprehensiveness and accuracy of the underlying databases, and no side-by-side comparison of results from the various

⁶⁰ Lyft Brief, p. 40.

checks at issue. Staff also maintains that Petitioners have provided no standard by which to measure their background check providers going forward.

Staff maintains that the statistical analyses the Petitioners rely on concerning the accuracy of the CJIS database are flawed, arguing that the analyses were based on preliminary results of an audit that could not be confirmed as reliable, completed, or ongoing. Staff further maintains that the Petitioners ignored the usefulness of discovering arrest information, which Staff says can be used to delay the approval of an application until a court disposition occurs. Staff also argues that non-custodial arrest information – which the Petitioners argue is often missed without fingerprints at arrest – does eventually reach CJIS databases when it most matters: at the time of conviction, detention, parole or probation.

Staff maintains that there are critical shortcomings in the Petitioners' personal-information-based searches, arguing that their identification verifications are subject to error and more susceptible to fraud than biometric processes like fingerprinting, although Lyft's face-to-face identity verification was an important additional safeguard. Staff further questions whether Sterling or Checkr, as consumer reporting agencies, may report criminal histories more than seven to ten years old, criticizes the fact that neither Sterling nor Checkr provide continuous criminal history updates, and argues that concerns about the disparate impacts of arrest information on minority groups is not an element of the test of whether a background check is comprehensive and accurate.

D. Yellow's Position

In its Brief, Yellow maintains that the CJIS background check is more accurate and comprehensive than the TNC background checks because: 1) the CJIS check is

biometric and more accurately verifies applicant identities than the TNC personal information-based searches; 2) unlike the CJIS check, the TNC checks do not timely and automatically update the Commission if a licensed TNC driver's – Transportation Network Operators – criminal history has changed; and 3) only the CJIS check provides access to the primary federal and state repositories used by law enforcement and provides a look back period longer than seven years. Yellow further emphasizes evidence of significant failures in the TNC background check processes, and maintained that the Commission should reject the waiver applications due to the lack of any enforceable standards controlling those processes. Yellow argues that it is impossible for the Commission to condition a waiver in a way that makes the TNC checks as comprehensive and accurate as the CJIS process, and that the waiver applications should be denied.

E. OPC's Position

In its Brief, OPC maintains that neither Lyft nor Rasier demonstrated that their background checks are as comprehensive and accurate as the statutory background check used for taxi, limousine, and sedan drivers, and recommends that the Commission deny both TNC waiver applications. OPC notes that unlike the established fingerprinting process, the TNC processes were not biometric, did not automatically notify the Commission when a licensee's criminal status changes, and may miss a charge or a conviction that would have been noted via a CJIS generated check. OPC further notes that Staff's witnesses expressed misgivings about the accuracy and relative adequacy of the TNC checks, based in part on actual experience reviewing both the TNC and CJIS checks. OPC also contends that if the Commission granted the TNCs the requested

waivers, the Commission would not have adequate control over TNC background check processes provided by vendors who are not regulated by the Commission and whose identities and practices were subject to change. OPC further maintains that, notwithstanding certain flaws in the CJIS system, the system was improving and was as accurate and complete as possible, especially as applied by Transportation Division Staff.

OPC then urges the Commission to be open to re-evaluating a different background check process in a few years' time, when technology may make a waiver appropriate. In the meantime, OPC notes that the Commission could adopt a hybrid approach that incorporates both checks and allows a full study of the relative benefits of both approaches. If the Commission does decide to grant waivers, OPC urges the Commission to limit the waiver to a certain period of time, and to require the TNCs to use accredited credit reporting agencies, as well as issue prior notice to the Commission of any material change in the identity of or process used by the background check provider.

III. COMMISSION DECISION

A. The Commission's Decision in this Proceeding is Governed by Section 10-404(e) of the Public Utilities Article

On July 1, 2015, Chapter 204 of the 2015 Laws of Maryland took effect,⁶¹ establishing a comprehensive statutory scheme governing the Commission's jurisdiction

⁶¹ In the hope that all providers of passenger-for-hire services compete on as level a playing field as reasonably possible, *inter alia*, Chapter 204 also made alternative driver licensing processes available to taxicabs, sedans, and limousines, and ordered the Commission to explore other ways to allow sedan, limousine, and taxicab companies to compete more effectively in the marketplace.

over transportation network companies.⁶² Under the new PUA § 10-404, the Commission may allow TNOs to operate under provisional authority or under a temporary or permanent license. Although the Commission was authorized to begin issuing permanent licenses immediately to TNOs who complied with the fingerprint-based CJIS background check requirement of PUA § 10-104(b), if the TNC for which the TNO drove provided the Commission with the details of an alternative background check process it uses, as specified under PUA § 10-404(b)(2)(i) and (ii),⁶³ the Commission could not, before April 1, 2016, require an applicant to comply with the fingerprinting requirements of § 10-104(b). After the Commission began issuing temporary one-year licenses⁶⁴ to TNOs in December of 2015, the General Assembly passed an emergency, clarifying measure that became Chapter 28 of 2016, which delayed the date by which the Commission could impose fingerprinting requirements to December 15, 2016.⁶⁵

Section 10-404(e) of the Public Utilities Articles provides:

(1) A transportation network company may request that the Commission waive the requirement to comply with subsection (c) of this section and instead require

⁶² The Commission's decision in this Order is also made with a careful and mindful focus on our responsibility to protect the riding public, and we recognize the important work of the PSC's transportation division to ensure the safety of Marylanders by licensing taxicab, sedan, limousine and TNC drivers, and enforcing laws intended for public safety.

⁶³ The alternative background check had to include a national criminal history check conducted by the National Association of Professional Background Screeners (NAPBS) or a comparable entity approved by the Commission, including a Multi-State Multi-Jurisdiction Criminal Records Database Search or a search of a similar nationwide database with validation; a search of the Sex Offender and Crimes Against Minors Registry; and a search of the U.S. Department of Justice's National Sex Offender Public Website. The alternative check also had to include a driving record check that includes a driving history research report.

⁶⁴ The Commission is authorized to approve a temporary TNO license only if a TNO applicant provides all information that the Commission requires, and the Commission is satisfied with the successful submission of the information required by PUA § 10-404(b)(2)(i) and (ii).

⁶⁵ Chapter 28 also clarified that an alternative background check must be conducted by a consumer reporting agency or a comparable entity, as opposed to the National Association of Background Screeners or a comparable entity. Chapter 28 provided the same fingerprinting compliance date extension to the alternative licensing processes available to sedans and limousines, and allowed the Commission to authorize taxicabs to use devices other than taximeters to measure charges for taxicab service.

compliance with subsection (b)(2) of this section for applicants and operators of the transportation network company.

(2) On receipt of a request under paragraph (1) of this subsection, the Commission shall:

- (i) determine whether the transportation network company's process for complying with subsection (b)(2) of this section can be shown to be as comprehensive and accurate as complying with the supplemental criminal background check as set forth under § 10-104(b) of this title; and
- (ii) within 3 months after receiving the request, determine whether to:
 1. grant the waiver;
 2. deny the waiver; or
 3. approve an alternative process.

Thus, PUA § 10-404(e)(1) authorizes a TNC to request that the Commission waive the requirements of Section 10-104(b), and grant permanent licenses to TNOs who drive for TNCs that comply with the requirements of the alternative background check specified under § 10-404(b)(2). Upon receipt of a waiver request, and after determining whether the TNC's process for complying with § 10-404(b)(2) can be shown to be as comprehensive and accurate as complying with the fingerprinting requirements of § 10-104(b), the Commission must determine whether to grant the waiver, deny it, or approve an alternative process.⁶⁶

B. None of the Background Checks at Issue are Completely Comprehensive and Accurate

If there is one fact that all parties agree on in this proceeding, it is that no background check is perfect. The fingerprinting-based background check process required by PUA § 10-104(b) has the confidence of Staff, OPC, and most of the long-

⁶⁶ PUA § 10-404(e)(2).

regulated for-hire industry represented by Yellow, and is also the long-established standard endorsed by the General Assembly for discovering criminal history – not only for for-hire drivers, but also for some, but not all, other occupations licensed by the State.⁶⁷ On the other hand, it does not have the confidence of new providers of passenger-for-hire services like Rasier and Lyft, and the General Assembly has recognized the possibility that the processes employed by Rasier and Lyft may in fact be as comprehensive and accurate.

In order to rule on each waiver application, as well as meet the Commission’s core duty of ensuring the safe provision of services provided by public service companies,⁶⁸ the Commission may only approve an alternative background check process if it is at least as comprehensive and accurate as the CJIS check required by PUA § 10-104(b). PUA §10-404(e) provides no specific metrics to determine whether alternatives to fingerprint criminal history background checks can be shown to be as comprehensive and accurate as the incumbent process. For this reason, the Commission must approach the instant comparison and decision with a keen eye toward ensuring that public safety is maintained a level at least as high as under the standard required by PUA § 10-104(b).

Yellow,⁶⁹ OPC, and Staff have valid concerns about specific aspects of the identify verification, criminal history updates, and the comprehensiveness of the

⁶⁷ Brief of the Maryland Office of People’s Counsel (“OPC Brief”), p. 5-6.

⁶⁸ See PUA § 2-113(a)(2). The Commission must also ensure the operation of public service companies in the public interest, and consider the economy of the State. § 2-113(a). In setting classifications, regulations, and practices relating to common carriers, the Commission must also consider, *inter alia*, the inherent advantages of transportation by common carriers and the need, in the public interest, of adequate and efficient transportation services by common carriers at the lowest cost consistent with furnishing these services. § 4-302(b).

⁶⁹ We note that in reaching our decision, we did not in any way rely on that portion of Yellow’s brief that Rasier found objectionable. Therefore, Rasier’s motion to strike will be denied as moot.

commercial searches employed by the Petitioners. On the other hand, the Commission also recognizes the various attributes Lyft and Rasier have identified about the TNC checks.⁷⁰ Although both checks take slightly different approaches to accomplish the same goal as fingerprint-based searches, each check involves extensive efforts to identify criminal history, are supplemented by ongoing safety protocols and updates, and include unique and emerging methods of authenticating identities.⁷¹ Moreover, each TNC's background check provider has accomplished a level of accreditation that gives the Commission confidence that it is well-run among its peers.⁷²

In order to address the concerns of Yellow, OPC and Staff while preserving the benefits of the existing TNC checks, and in accordance with PUA § 10-404(e)(2)(i), we will approve an alternative process.⁷³ We find that the alternative background check processes we approve below are as comprehensive and accurate as the fingerprint-based background check process under PUA § 10-104(b).

C. The Alternative Process Approved for Rasier

Rasier shall continue to engage in every aspect of its current process⁷⁴ as outlined in the written and oral testimony presented to the Commission in this proceeding. In addition, the following modifications shall be incorporated:

⁷⁰ See *Infra* at 6-12.

⁷¹ *Id.*

⁷² *Id.* at 7, 9-10.

⁷³ The Commission also notes its consideration of hundreds of letters and postcards from consumers, TNOs, elected officials, trade groups, nonprofit organizations, and other entities, both for and against granting the requested waivers.

⁷⁴ Nothing in this Order changes the current process Staff undertakes to review the background checks provided to it by Rasier or Lyft, and to decide whether to allow TNOs to operate. Subject to review by the Commission, Staff shall continue to exercise its judgment in deciding what criminal history and motor vehicle history bears a direct relationship to a TNO's fitness to serve the public.

If Rasier engages a different background check provider, or makes a material change to the background check processes it or its provider currently employ, Rasier shall provide sixty days prior written notice to the Commission, Staff, and OPC so that the Commission may have an opportunity to review the change. Additionally, any CRA that Rasier uses as its background check provider must be audited and accredited by the BSCC of the NAPBS. Each TNO application submitted to the Commission that uses Rasier's alternative process shall be accompanied by a written certification in which Rasier certifies that it has verified the identity of the TNO applicant.

Rasier shall apply its Real-Time ID Check to at least 75% of its TNOs, statewide. Rasier shall require its drivers to affirmatively agree to a term or condition that upon permanent deactivation they must return their trade dress to Rasier.

Rasier shall continue to rerun background checks annually. Rasier shall have its drivers agree to a term or condition that TNOs must report to Rasier within three business days of occurrence arrests and convictions that bear on the fitness of a TNO to provide safe transportation services to the public. Rasier shall promptly report to the Commission any and all deactivations that result from the aforementioned self-reporting requirement.

Within ninety days of the date of this Order, Rasier shall report to the Commission on the feasibility of establishing a protocol by which Rasier may receive driving history updates from the Maryland Department of Transportation's Motor Vehicle Administration.

Rasier shall, in the criminal history repositories it determines are appropriate for investigation, continue to look back through the entire adult history of its applicants for convictions in Maryland, and where possible, convictions in other jurisdictions. The

Commission reserves the right to order Rasier, upon a showing of good cause by Staff, to revisit a background check of any TNO who Staff believes may need to have their criminal history reexamined.

Rasier shall report annually to the Commission, Staff, and OPC on its operations under the alternative background check process approved by this Order, including information about any and all safety-related complaints received, any and all changes in Rasier's internal background check process, TNO deactivations, and the total number of active TNOs.⁷⁵

D. The Alternative Process Approved for Lyft

Lyft shall continue to engage in every aspect of its current process as outlined in the written and oral testimony presented to the Commission in this proceeding. In addition, the following modifications shall be incorporated:

If Lyft engages a different background check provider, or makes a material change to the background check processes it or its provider currently employ, Lyft shall provide sixty days prior written notice to the Commission, Staff, and OPC so that the Commission may have an opportunity to review the change. Additionally, any CRA that Lyft uses as its background check provider must be audited and accredited by the BSCC of the NAPBS.

Lyft shall continue its practice of interviewing drivers in person to authenticate

⁷⁵ Although the Commission is not establishing a time limit on the alternative process established in this case, the Commission notes that it will continue to monitor the effectiveness of the process, and that a future Commission may revisit the process if it has concerns about its effectiveness of Rasier's compliance with its requirements. Transportation network companies, such as those represented by the applicants, have been shown to be generally popular amongst the travelling public. By using emerging technologies to their benefit, the networks provide a service that is widely used as a transportation alternative. It is therefore in the public interest to ensure on a regular and periodic basis that the companies and the technology they employ continue to meet high standards of public safety.

their identities. Each TNO application submitted to the Commission that uses Lyft's alternative process shall be accompanied by a written certification in which Lyft certifies that it has verified the identity of the TNO applicant. Lyft shall require its drivers to affirmatively agree to a term or condition that upon permanent deactivation they must return their trade dress to Lyft.

Lyft shall continue to rerun its background check annually. Lyft shall have its drivers agree to a term or condition that the TNOs must report to Lyft within three business days of occurrence arrests and convictions that bear on the fitness of a TNO to provide safe transportation services to the public. Lyft shall promptly report to the Commission any and all deactivations that result from the aforementioned self-reporting requirement.

Within ninety days of the date of this Order, Lyft shall report to the Commission on the feasibility of establishing a protocol by which Lyft may receive driving history updates from the Maryland Department of Transportation's Motor Vehicle Administration.

Lyft shall, in the criminal history repositories it determines are appropriate for investigation, look back through the entire adult history of its applicants for convictions in Maryland, and where possible, convictions in other jurisdictions.⁷⁶ The Commission also reserves the right to order Lyft, upon a showing of good cause by Staff, to revisit a background check of any TNO who Staff believes may need to have their criminal history reexamined.

⁷⁶ The Commission does not perceive a barrier under the FCRA or MCCRA to looking for convictions that occurred more than seven years ago.

Lyft shall report annually to the Commission, Staff, and OPC on its operations under the alternative background check approved by this Order, including information about any and all safety-related complaints received, changes in its internal background check process, TNO deactivations, and the total number of active TNOs.⁷⁷

IT IS THEREFORE, this 22nd day of December, in the year Two Thousand and Sixteen, by the Public Service Commission of Maryland,

ORDERED: (1) That, in lieu of the fingerprinting-based background check process required under § 10-104(b) prior to the issuance of permanent licenses, the Commission approves an alternative background check process for Rasier as specified in Section **III.C** of the Commission Decision in this Order;

(2) That Rasier shall notify the Commission within 10 business days from today whether it accepts all of the above-stated modifications, and if it does not, Rasier's Petition to Waive Section 10-104(b) of the PUA is denied;

(3) That, in lieu of the fingerprinting-based background check process required under § 10-104(b) prior to the issuance of permanent licenses, the Commission approves an alternative background check process for Lyft as specified in Section **III.D** of the Commission Decision in this Order;

(4) That Lyft shall notify the Commission within 10 business days from today whether it accepts all of the above-stated modifications, and if it does not, Lyft's Petition

⁷⁷Although the Commission is not establishing a time limit on the alternative process established in this case, the Commission notes that it will continue to monitor the effectiveness of the process, and that a future Commission may revisit the process if it has concerns about its effectiveness of Lyft's compliance with its requirements.

to Waive Section 10-104(b) of the PUA is denied;

(5) Rasier's motion to strike excerpts of Yellow's brief is DENIED as moot;
and

(6) That all other motions not granted herein are denied.

/s/ W. Kevin Hughes _____

/s/ Jeannette M. Mills _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____
Commissioners⁷⁸

⁷⁸ Commissioner Harold D. Williams did not participate in this proceeding.