Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2014-2415047

Application of Lyft, Inc.

PROTEST ON BEHALF OF
PENNSYLVANIA ASSOCIATION FOR JUSTICE
REQUEST FOR ORAL HEARING

The Pennsylvania Association for Justice (PAJ), by and through its attorneys, Ray F. Middleman, Esquire, Paul S. Guarnieri, Esquire and Malone Middleman, P.C., hereby file the within Joint Protest to the above-captioned Application of Lyft, Inc. ("Applicant") and in support thereof sets forth as follows:

1. Applicant filed an application for authority as published in the Pennsylvania Bulletin and as set forth in Appendix A.

2. The name and business addresses of the Protestant is set forth in Appendix A which is attached hereto.

3. The name, business address and telephone number of Protestant's attorneys are as follows:

Ray F. Middleman, Esquire
Paul S. Guarnieri. Esquire
Malone Middleman, P.C.
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
(724) 934-6888

4. By this application, Applicant seeks authority to transport, by motor vehicle, persons in experimental service of Transportation Network Company for passenger trips between points in Pennsylvania.

5. The Pennsylvania Association for Justice (PAJ) is a non-profit organization with a membership of approximately 2,200 men and women of the trial bar of the Commonwealth of Pennsylvania. For forty-five years, the Association (formerly the Pennsylvania Trial Lawyers Association (PaTLA) has promoted the rights of individual citizens by advocating the unfettered right to trial by jury, full and just compensation for innocent victims, and the maintenance of a free and independent judiciary. The interests and standing in protesting the above application rests with ensuring that the members of PAJ are able to provide proper service to their clients and obtain for those clients the fullest protection under the law. The granting of operating rights to Lyft, under the proposed scenario of insurance, will have a direct impact on PAJ members and their ability to protect their clients from loss due to injury as a result of negligent conduct by Lyft drivers.

6. "An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:...

> (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public....
>
> (5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders."

52 Pa.Code § 41.14(b)(3)(5).

7. Applicant has been providing common carrier ground transportation service in Allegheny County for the past two (2) months (or longer), and has openly advertised its services via the internet and other sources.

8. Applicant does not hold PUC operating rights to operate their ground transportation services anywhere within the Commonwealth of Pennsylvania.

9. The drivers who provide the transportation service for the benefit of Applicant do not hold PUC operating rights

10. Applicant's experimental service proposes to operate a peer-to-peer "ride-sharing" network using digital software to facilitate transactions between passengers and "ridesharing" operators using their own vehicles to provide transportation. (Application Response to Item #9).

11. The service provided by Applicant and its drivers is not "ridesharing" service as defined under Pennsylvania Statutes.

12. "Ride Sharing" is statutorily defined by 55 P.S. § 695.1 as:

> (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver who is not engaged in transportation as a business. The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
>
> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
>
> (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

13. Importantly for our purposes, "ridesharing" as defined above does not require commercial automobile insurance coverage – although many employer operated "ridesharing" or "van pool" operations have commercial automobile coverage rather than personal automobile coverage, neither of these coverages would apply to livery or fare-generating commercial transportation activities.

14. The service being provided by Applicant and its drivers is for commercial, revenue/fare generating business purposes; not for transportation of employees to or from their place of employment by a motor vehicle owned or operated by the employer; and is not owned or operated by a public agency or nonprofit organization. It is, therefore, not "ridesharing" as legislatively defined by the Commonwealth of Pennsylvania.

15. It is believed that Applicant describes its services as "ridesharing" to avoid the regulatory authority of the Pennsylvania Public Utility Commission and to escape the need to provide comprehensive livery or fare-sharing liability insurance on the vehicles used in its TNC ground transportation businesses.

16. "The following laws and regulations of this State shall not apply to any ridesharing arrangement:

> (1) Title 66 of the Pennsylvania Consolidated Statutes (relating to public utilities).
>
> (2) Laws and regulations containing special insurance requirements for motor carriers.
>
> (3) Laws imposing a greater standard of care on motor carriers than that imposed on other drivers or owners of motor vehicles.
>
> (4) Laws and regulations imposing special equipment requirements and special accident reporting requirements on motor carriers."

55 P.S. § 695.1

17. Applicant's blatant disregard for the rules of this Commission and the laws of the Commonwealth of Pennsylvania by illegally operating during the pendency of its application, and before, should not be countenanced and further demonstrates Applicant's lack of fitness under 52 Pa.Code § 41.14(b)(5).

18. Applicant's proposed form of insurance (or lack thereof) is illusory and fails to comply with the insurance requirements of the 52 Pa. Code § 32.11(a) and (b), and the evidentiary standards of 52 Pa.Code § 41.14(b)(3).

19. In Attachment "A" of its Application, Lyft states that it "would obtain an excess liability insurance policy with a liability limit of $1,000,000 per incident... [and] require all individual drivers to maintain personal liability insurance in at least the amounts required by law."[1]

20. The insurance requirements as set forth in the Pennsylvania Code are as follows:

> (a) A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.
>
> (b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than $ 35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The $ 35,000 minimum coverage is split coverage in the amounts of $ 15,000 bodily injury per person, $ 30,000 bodily injury per accident and $ 5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of $ 25,000 and first party wage loss benefits in the amount of $ 10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. §§ 1701 -- 1799.7 (relating to Motor Vehicle Financial

[1] Remarkably, Applicant proposes to preclude Protestant and members of the public from reviewing their so-called insurance records, and in fact, presumes to impose conditions upon the Commission's right to review those records. *See* : *Application, Attachment "A", page 4,* ¶7 ("The Commission shall be entitled to inspect records to investigate compliance with the requirements of this addendum and the provisions of the Pennsylvania Code indentified herein; ***provided, that any records disclosed to the Commission shall not be subject to disclosure* to a third party** by the Commission, including through a request submitted pursuant to the Pennsylvania Right to Know Law of the federal Freedom of Information Act.". (Emphasis added).

> Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits).

52 Pa. Code § 32.11(a) and (b).

21. Under Applicant's proposal for insurance, drivers who sign up to drive for Lyft will allegedly be primarily insured by their personal automobile policy of insurance, and Applicant's policy would be "excess coverage". However, coverage for any claim on the driver's policy would undoubtedly be denied because the vehicle is being used to carry a person or property for hire. Applicant's so-called excess liability coverage would not be implicated because there would not be an underlying primary policy of commercial insurance. "...[T]raditional excess insurance coverage generally is subject to an exhaustion requirement. See 2 EUGENE R. ANDERSON ET AL., INSURANCE COVERAGE LITIGATION §13.4, at 106 (1997) ("Excess coverage attaches only after the primary coverage has been paid out or exhausted."). *Nationwide Ins. Co. v. Schneider*, 960 A.2d 442,449 (Pa. 2007).

22. In short, under Applicant's proposed plan of insurance, there would be no coverage for injury and damages to persons and property caused by Applicant's drivers. This "gap" insurance coverage constitutes an immediate and ongoing hazard, leaving drivers, passengers, and pedestrians (unknowingly) in the position where they are led to believe that they are covered by insurance when, in fact, they are not.

23. It is beyond dispute that motor vehicles operated on public roads can potentially cause catastrophic injuries to individuals – drivers, passengers and pedestrians. Applicant's proposal to provide ground transportation services with non-certificated drivers without any viable insurance is an unacceptable risk to the public.

24. On March 21, 2014, the California Department of Insurance held an investigative hearing relating to insurance issues and Transportation Network Companies (TNCs), including Lyft. The California issues mirror those presented by Applicant's proposed plan of insurance in

the instant application. The California Insurance Commission found that, "as long as TNCs are encouraging non-professional drivers to use their personal vehicles to drive passengers for a profit, **a risk for which personal automobile insurance is not available**, TNCs should bear the insurance burden." (See April 7, 2014 letter from Dave Jones, Insurance Commissioner to Michael R. Peevey, President, California Public Utilities Commission, attached hereto as Appendix "B", emphasis added).

25. Under the Applicant's plan of insurance, all claims would first be presented to the driver's personal insurance company (primary coverage). There is no provision under the Applicant's proposal for providing a certificate of insurance for the drivers' policies of insurance, and as such, the proposal fails to comply with 52 Pa. Code § 32.11(a). There would be no way for the Commission to inspect those individual policies, nor is there any mechanism by which the Commission could verify that the drivers have informed their insurance carriers that they are providing TNC ground transportation. It is unquestioned that the livery exclusion in every personal automobile insurance policy would operate to trigger an outright denial of coverage under any such policy.

26. The clear intent of the Pennsylvania Code and the Motor Vehicle Financial Responsibility Act is to require motor carriers of passengers to provide insurance coverage to respond to claims for personal injuries, death and property damage. Applicant's proposal that the drivers will be primarily insured by their personal automobile policy of insurance is illusory because those policies will not extend to livery or commercial transportation operations.

27. Further, PAJ has serious doubts about when Applicant's so-called insurance would be effective. For instance, would the insurance coverage extend to periods when the driver is operating his/her vehicle while logged into Lyft's App but waiting for a match? The California Department of Insurance addressed this issue by defining three distinct periods of TNC services requiring insurance:

- Period 1: App Open → No Match
- Period 2: Match Accepted → Passenger Pick-Up
- Period 3: Passenger in the Car → Passenger has safely exited the vehicle

(Appendix "B", page 2).

28. It is believed and, therefore, averred that, based upon the foregoing, the Applicant does not possess the technical ability to provide the proposed service and lacks a propensity to operate safely and legally.

29. Protestant does not have any restrictive amendment to propose which would satisfy its interests in this proceeding.

30. Protestant hereby requests that this application be set for an oral hearing so that Protestant may be able to cross-examine Applicant's witnesses, conduct discovery and present evidence to the issues relative to the application. Protestants represent that it will appear at the hearing to present evidence relative to the issues involved in this application.

31. Pursuant to Section 333(c) of the Public Utility Code (66 Pa.C.S.A. §333(c)), Protestant hereby request a list of Applicant's witnesses who are expected to testify in the above-captioned proceeding, together with the subject matter of their anticipated testimony and, in particular, any complaints or other evidence pertaining to the service or operations of Protestants.

WHEREFORE, Protestant respectfully requests that the granting of the application be withheld; that the proceedings be assigned for oral hearing with leave to Protestant to participate fully therein; and that Applicant be required to make available at the hearing competent evidence for examination on all material and relevant facts bearing on the application.

Respectfully submitted,

Pennsylvania Association for Justice

Date: May 5, 2014

By:

Ray F. Middleman, Esquire
Paul S. Guarnieri, Esquire
Attorneys for Protestant
MALONE MIDDLEMAN, P.C.
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
(724) 934-6888

Re: Application of Lyft, Inc.
Docket No. A-2014-2415047

APPENDIX A

SCOPE OF AUTHORITY SOUGHT:

By application published in the Pennsylvania Bulletin on April 19, 2014, Applicant seeks authority to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania.

NAME AND ADDRESS OF PROTESTANT:

The name and business address of the Protestant is: Pennsylvania Association for Justice, 121 South Broad Street, Suite 600, Philadelphia, PA 19107.

DAVE JONES
Insurance Commissioner

April 7, 2014

Michael R. Peevey, President
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94105

Dear Commissioner Peevey:

The California Department of Insurance (CDI) held an investigative hearing on March 21, 2014, relating to insurance issues and Transportation Network Companies (TNCs) such as Uber, Lyft, Sidecar and Wingz. The full agenda, background documents, and audio of the hearing are available on the web at http://www.insurance.ca.gov/video/0030VideoHearings/tnc.cfm.

CDI recommends the California Public Utilities Commission (CPUC) enact additional regulations and amend existing regulation to address insurance coverage gaps in California related to the operation of TNCs.

Underlying these findings and recommendations is the conclusion that as long as TNCs are encouraging non-professional drivers to use their personal vehicles to drive passengers for a profit, a risk for which personal automobile insurance is not available, TNCs should bear the insurance burden.

Finding 1: Drivers' existing personal automobile insurance does not cover TNC-related driving and auto insurers are not planning to offer coverage of this risk in the near future if ever.

TNCs are under the mistaken impression that personal automobile insurers cover now, planned to cover, or will cover the risk of TNC-related for-hire transportation.

Instead, CDI finds that personal automobile insurers never planned or intended to underwrite for this risk, which did not exist when the current policies were written. Insurers did not incorporate for-hire use when developing their rates. Adding this new TNC exposure to the personal automobile insurance "pool" may increase personal automobile insurance rates. The fact that some exclusions in personal automobile

300 Capitol Mall, Suite 1700
Sacramento, California 95814
Phone (916) 492-3500 • Facsimile (916) 445-5280

Appendix B

insurance policies may not be clear on this point should not be misinterpreted as an agreement to cover this new TNC risk.

One TNC in our hearing argued that the entire requirement for automobile insurance should be on the driver, and not the TNC. However, we have determined based on testimony from insurance trade associations and our direct communications with auto insurers and brokers that the owners of personal vehicles cannot currently purchase insurance that will cover livery use of the vehicle.[1] And that most if not all auto insurers have no plans to file for riders or endorsements to enable drivers to purchase this additional coverage as a part of their personal auto insurance.

Recommendation 1: Refine definition of "when providing TNC services" in the CPUC regulation

There are three distinct period associated with TNC-related livery services. The definition of "when providing TNC services" should cover these three periods:

- Period 1: App Open → No Match
- Period 2: Match Accepted → Passenger Pick-Up
- Period 3: Passenger in the Car→Passenger has safely exited the vehicle

Recommendation 2: Require $1 million primary commercial liability insurance during all three periods

California Insurance Code §11580.1 (b) (1) specifies the minimum financial responsibility limits for private passenger vehicles in California:

- $15,000 for injury/death to one person
- $30,000 for injury/death to more than one person
- $5,000 for damage to property

These limits are simply too low for drivers who are operating their vehicle for a livery purpose. The California Department of Insurance recommends that commercial liability insurance be required as follows:

- Period 1: Primary commercial liability insurance in the amount of $1,000,000[2]
- Period 2: Primary commercial liability insurance in the amount of $1,000,000

---

[1] CDI has been advised that (1) insurers will not sell commercial insurance for livery purposes to a driver unless his or her car is registered commercially and has a "Transportation – Charter Party" (TCP) permit; and (2) the CPUC does not allow a car with a TCP permit to be driven for a TNC.

[2] $1,000,000 combined single limit for bodily injury and property damage.

- Period 3: Primary commercial liability insurance in the amount of $1,000,000

TNCs make a "moral hazard" argument against requiring the TNC to provide insurance during Period 1, including: (1) drivers may be running personal errands; (2) drivers may have multiple applications open at the same time; (3) drivers with low limits on their personal automobile insurance policy will turn on the application in the event of an accident to secure more robust coverage; and (4) drivers start to look more like employees or independent contractors if the TNC covers this period. Even if a driver is running errands during Period 1, if that driver has the app open, the TNC benefits from the driver showing availability to provide rides to customers. TNCs are best positioned to address most or all of the "moral hazard" issues listed above, as opposed to shifting the cost of the lack of insurance to passengers, pedestrians or other drivers.

Insurance companies and brokers tell CDI that Californians cannot purchase either (1) personal automobile insurance that covers driving passengers for hire, or (2) livery insurance on a personal vehicle. While the TNCs argue that some personal automobile insurer might file an endorsement for Period 1, no such endorsement has been filed and insurers testified that they do not plan to file such an endorsement.

The only solution to cover this insurance gap, short of mandating personal lines insurers cover it, is to have the TNCs bear this risk. CDI concludes that personal auto insurers should not be mandated to cover a risk which is associated with the business model of the TNCs.

Two witnesses at CDI's March 21 hearing testified that Period 1 is the most dangerous part of a TNC trip, especially in light of the "surge pricing" some TNCs have adopted that might encourage drivers to rush to a certain part of town to benefit from the higher fares available. At least one death and several injuries have already resulted from a collision with pedestrians in California while a driver was driving for a TNC during period 1, according to testimony at our hearing. The CPUC regulation should be amended to require TNCs provide primary commercial liability for period 1.

Recommendation 3: TNCs should carry additional coverages that protect drivers and passengers

TNCs should be required to carry $1,000,000 in uninsured/underinsured motorist coverage because it is important to protect both drivers and passengers. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose.

TNCs should also be required to carry comprehensive and collision that mirror what the driver has purchased on his or her personal automobile insurance policy, subject to a reasonable deductible, perhaps not more than $1,000. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose. This would also cover lien holders that require comprehensive and collision coverage to secure the lender's interest in the vehicle

The CPUC should require that TNCs provide disclosures to advise TNC drivers who do not have comprehensive and collision coverage that their car will not be covered by the TNC's insurance in the event of an event that would normally trigger collision or comprehensive coverage.

Recommendation 4: Require effective notice to personal automobile insurers

Drivers should know, before they begin driving for a TNC, if their personal automobile insurer will cover any of the risks related to TNC activity. The current CPUC regulations require the TNCs to obtain a copy of the driver's personal automobile insurance policy. CDI recommends that the driver also be required to notify his or her personal automobile insurer of the driver's affiliation with a TNC, and that the TNC be required to have the driver's notification to his or her personal automobile insurer on file before authorizing the driver to provide rides. It should be noted that some personal automobile insurers may not wish to insure vehicle owners who drive for TNCs. The driver should be made aware of the potential of losing his or her personal automobile insurance coverage by driving for a TNC.

Recommendation 5: TNCs must share "app" data with insurers after accidents

TNCs should be required to share "app" data with the personal automobile insurer during the insurance company's investigation of an accident, so personal automobile insurers can have more information about whether the driver was performing TNC services at the time of the accident. This requirement should be disclosed to the TNC driver.

Recommendation 6: Evidence of coverage

The CPUC should require the TNCs to provide to the TNC driver evidence of coverage from the TNC which the driver can share in the case of an accident during a TNC-covered period.

Recommendation 7: Disclosure about "private clients"

Taxis and charter party carriers tend to develop over time "private clients" who schedule rides directly with the driver, outside of the normal dispatch channels. Because the

insurance for taxis and limos is in effect 24/7/365, the driver and the passenger have coverage during these rides. But, the CPUC-required TNC insurance is in effect only when the driver is performing a TNC activity. If a TNC driver picks up a "private client" outside of the TNC app, it is likely no insurance would be in effect, because the driver is using his or her personal vehicle for a livery purpose. TNCs should be required to provide prominent disclosures about this risk to both drivers and passengers.

Recommendation 8: Delay new insurance requirements

Some time may be needed to secure this expanded coverage. We recommend that the additional coverage requirements set forth above be delayed 60 days to allow the TNCs time to secure the additional coverage.

Legislative Recommendation 1: Legislature should isolate TNC use from personal automobile insurance

Personal automobile insurers are concerned about the duty to defend their insureds, while establishing that the insured used the vehicle for a livery purpose outside the scope of the personal automobile insurance. CDI is concerned about consumer complaints that personal automobile insurers are cancelling the personal automobile insurance of drivers who are driving for TNCs, because those insurers do not insure commercial risks. The Legislature could enact a statute similar to Assembly Bill 1871 (Jones 2010), related to personal vehicle sharing, which holds harmless an owner's personal automobile insurer for losses that occur when the vehicle is being used in a car-sharing program. This would allow Californians to keep their personal automobile insurance when they are using their car for personal or commute purposes, but place the entire insurance burden on the TNCs for Periods 1-3.

Legislative Recommendation 2: Revisit the "ridesharing" and "casual carpooling" statutes

CDI has considered whether any TNC use should be covered under the casual car pooling (or ridesharing) provisions of California law or insurance contracts. The CPUC's decision to regulate TNCs made it clear that these services are for-hire common carriers, and thus not casual carpooling. However, casual car pooling is a type of activity that would benefit from more clarity in the law and potentially different treatment. CDI offers to work with the CPUC and the Legislature to better define "incidental" trips, "share-the-expense," and "car pooling" in personal automobile insurance policies. This would allow apps to match not-for-profit drivers with casual riders, promote the share economy, and encourage fewer vehicles on California roadways.

Please contact Senior Staff Counsel Jennifer McCune at (415) 538-4148 or Deputy Commissioner Chris Shultz at (916) 492-3589 if you have any questions.

Sincerely,

DAVE JONES
Insurance Commissioner

Cc: Commissioner Michael Florio
Commissioner Carla J. Peterman
Commissioner Michael Picker
Commissioner Catherine J.K. Sandoval
Assemblymember Susan Bonilla
Assemblymember Adrin Nazarian
Carol Brown, Chief of Staff, Commissioner Peevey, CPUC
Marzia Zafar, Director of Policy and Planning, CPUC
ALJ Robert M. Mason III, CPUC
Chris Shultz, Deputy Insurance Commissioner, CDI
Robert Herrell, Deputy Commissioner, CDI
Joel Laucher, Deputy Insurance Commissioner, CDI
Jennifer McCune, Senior Staff Counsel, CDI

CERTIFICATE OF SERVICE

I hereby certify that I have, this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

James P. Dougherty, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Dated this 5th day of May 2014

Paul S. Guarnieri Esquire
Counsel for Protestant