The Insurance Federation of Pennsylvania, Inc.

1600 Market Street
Suite 1720
Philadelphia, PA 19103
Tel: (215) 665-0500 Fax: (215) 665-0540
E-mail: smarshall@ifpenn.org

Samuel R. Marshall
President & CEO

May 5, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Applications of Lyft, Inc. for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County and in Pennsylvania

Docket No. A-2014-2415045 (Allegheny County)
Docket No. A-2014-2415047 (Pennsylvania)

Dear Secretary Chiavetta:

Enclosed for filing with the PUC are Protests to the above Applications filed by the Insurance Federation of Pennsylvania, Inc.

If you need any additional information, please contact me at 215-665-0507.

Sincerely,

Samuel R. Marshall

Samuel R. Marshall

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

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Protest with respect to Application A-2014-2415047 filed by Lyft, Inc.

The Insurance Federation of Pennsylvania, Inc. ("Insurance Federation") files this Protest to the above-captioned Application filed by Lyft, Inc., as noticed in the April 19 **Pennsylvania Bulletin**. Pursuant to Sections 3.381(c) and 5.52 of Title 52 of the Pennsylvania Code, the Insurance Federation submits the following in support of its Protest.

1. The Insurance Federation's interest in this Application

The Insurance Federation of Pennsylvania, Inc. is a non-profit trade association registered with the Pennsylvania Department of State and having its principal place of business at 1600 Market Street, 17th floor, Philadelphia, PA, 19103; its phone number is 215-665-0500. Its attorney is Samuel R. Marshall (PA ID No. 33619), who also serves as the Federation's President and CEO.

The Insurance Federation represents over 200 insurance companies doing business in the Commonwealth of Pennsylvania in legislative, regulatory and judicial matters. Among its members are the overwhelming majority of insurers providing private passenger auto insurance in this Commonwealth, as well as many insurers providing commercial auto insurance coverage.

The Federation's members therefore include auto insurers who provide the personal liability insurance coverage the Applicant promises to require for "any individual wishing to offer transportation as a driver on [its] TNC platform." Its members also include insurers who provide insurance on those who might be involved in accidents with the Applicant's drivers. In both situations, the Insurance Federation's members will have direct liability exposure resulting from the actions of the Applicant's drivers, and direct liability exposure resulting from the insurance coverage (or lack thereof) the Applicant proposes for its drivers.

As such, the Insurance Federation has standing to file this Protest. Trade associations have the standing of any or all of its members, and the Federation's members individually and collectively have standing here. Auto insurers, *including members of the Federation, have a substantial interest in this* Application: They provide the personal liability insurance the Applicant proposes to require of its drivers, as set forth in Section IV(A)(6)(a) of Attachment A of its Application, and which the Applicant professes will cover, at least in part, the liability of its drivers while acting in that capacity as part of the Applicant's envisioned Transportation Network Company.

That means the Federation's auto-insuring members have direct and immediate liability exposure created by the Applicant's proposal, an exposure unanticipated in their underwriting and rating of the coverage the Applicant requires of its drivers. In the world of insurance, nothing is more immediate, direct and adverse than to be exposed to liability that is unanticipated in the underwriting and rating process – and yet that is the precise result of the Application on the auto-insuring members of the Federation.

Accordingly, the Insurance Federation has an interest in the Application and would suffer an adverse impact if the Application were approved: The Application creates liability exposure for many of the Federation's members, and that exposure has not been anticipated, underwritten or rated in providing coverage to the potential drivers of the Applicant. Further, as will be explained below, the Application makes it veritably impossible for insurers – including the Federation's auto-insuring members - to properly anticipate, underwrite and rate for that exposure going forward due to the gaps and uncertainties of the insurance coverage the Applicant proposes to satisfy the insurance requisites in Section 32.11(a) and (b) of Title 52 of the Pennsylvania Code.

2. The Insurance Federation's objections to this Application

The Insurance Federation objects to the Application because it fails to satisfy both the intent and the specifics of the insurance requirements the PUC has established for passenger carriers, including the drivers on the Applicant's Transportation Network Company platform.

The PUC's insurance requirements for passenger carriers are set forth in Section 32.11(a) and (b). Subsection (a) sets forth the purpose: It conditions PUC approval as a passenger carrier on an Applicant's providing to the PUC "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." Subsection (b) sets forth the specifics of the insurance – a minimum of $35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from the authorized service, and including 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.

That's a clear dictate, and a sound underlying purpose: Consumers deserve the safeguard of readily-accessible insurance when riding in (or being in an accident with) passenger carriers. The PUC requires that passenger carrier applicants

affirmatively show that insurance as a requisite of its approval. It doesn't envision this insurance requisite being filled in a cobbled-together, piecemeal fashion: It requires an applicant to file with it a certificate of insurance at the outset, with the coverage coming from "an insurer" and applying to the full scope of that applicant's "authorized service."

The Applicant here, however, goes in the opposite direction: It doesn't provide any primary (or even secondary) insurance itself. While it offers the superficial appeal of $1 million in coverage, the reality is something far less: It is offering only excess coverage, which means its coverage is conditioned on the driver's personal insurance not responding, or covering only a portion of the driver's liability associated with the accident.

The Applicant doesn't offer a certificate of insurance satisfying the PUC's requirements. It doesn't offer a copy of its Excess Liability Policy, just a cursory description of it that avoids key coverage questions. And it doesn't offer certificates of insurance evidencing the drivers' personal auto insurance. While that might not be feasible under its proposal, the Applicant doesn't offer a suitable alternative to fulfill the PUC's insurance requisite: It doesn't provide a system for verifying the personal auto coverage of its drivers or providing the PUC such verification; nor does it provide a system for ensuring on an ongoing basis that its drivers' personal auto policies remain in force (e.g., not lapsed for nonpayment of premium, etc.).

More troubling, the Applicant does not recognize or deal with the livery exclusions found in veritably all personal auto policies – exclusions that apply to the very conduct its drivers will be performing. It is keenly aware of those exclusions and the coverage issues they present: They have been the subject of extensive legislative and regulatory comment, examination and action across the country. As the Applicant knows, the livery exclusions in the personal auto policies of its drivers present significant issues of insurance coverage.

The Applicant either ignores or is dismissive of those issues, at least in this Application. It assures the PUC that it will check with its drivers to see if they have personal auto insurance, and that it will provide an "Excess Liability Policy" to cover their drivers' liability if the personal auto insurer "does not respond" – whatever that means. That misses the point of the PUC's insurance requirement:

- The Applicant not only ignores or overlooks the livery exclusions found in personal auto policies, but it fails to adequately explain how its coverage will reconcile and coordinate with those exclusions. It says its coverage – its Excess Liability Policy – will cover liability if the driver's personal auto insurer doesn't respond. That is unduly and misleadingly vague. Most likely, it means the Applicant's coverage will apply only after a consumer

exhausts any and all avenues with the driver's personal auto insurer (including the Federation's auto-insuring members) – and only after that insurance is found not to apply (as with a court order affirming the applicability of the livery exclusion) or covers only part of the claim.

- That means consumers with liability claims against the Applicant's drivers will have to go through a two-tiered process that will be cumbersome and costly for both consumers and the personal auto insurers of the Applicant's drivers: Consumers will first have to attempt to recover under the driver's personal auto policy, testing the bounds of any livery exclusion provision. Only after that is done will the Applicant's coverage apply. The Applicant offers no guidance or method for prompt resolution of this uncertainty – whether the driver's livery exclusion applies will be fact- and policy-specific – so veritably every claim will be uncertain as to who provides coverage and when.

- That falls far short of the PUC's insurance requirement of providing a certificate of insurance by one insurer covering any liability arising out of the authorized service at least at certain minimum amounts.

For the auto-insuring members of the Insurance Federation, this opens unforeseen liability exposure as well as the cost and confusion of resolving claims of insureds who happen to become drivers of the Applicant. An insurer won't know if its insured has become a driver for the Applicant: The Application does not provide for notice to the driver's insurer or submission to the PUC of evidence of the driver's personal auto insurance; it merely says the applicant will check on this, far different than Section 32.11(a)'s requirement that proof of insurance be filed with and approved by the PUC itself, not merely checked on by the Applicant.

An insurer's need to know whether its insured has become a driver for the Applicant, and is using his or her insured car in that capacity, is hardly abstract or academic. It is a valid underwriting and rating element, and it may go to whether the insurer provides ongoing coverage; failure to disclose it could result in termination of coverage.

Further, an insurer won't know if its livery exclusion (assuming there is one) applies in a given situation. The Applicant's proposed excess coverage is vague on this, as it fails to precisely define when its drivers would be performing the "authorized services" that fall within its coverage. The most glaring example is whether the Applicant proposes its coverage will apply when its drivers are available but between trips (commonly described in the ride-sharing business model as "on app"), or only when its drivers have accepted a trip request through the Applicant until completion of the trip; this raises the related question of when

a trip ends – is it when the driver has left the passenger, or when the driver has returned from the destination (i.e., is it a one-way or round trip?).

Granted, in many cases, the issue of coverage will eventually be resolved between the driver's personal auto insurer and the Applicant's excess liability insurer. But while there would presumably at least be insurance, it would *become available only after likely legal actions – hardly what the PUC intends in* requiring an Applicant provide a certificate of insurance evidencing coverage for its drivers' liabilities when operating through its TNC platform.

And there may be cases where no insurance is ultimately found – where the Applicant's coverage does not apply, but where the driver's personal auto insurance doesn't, either. As noted in the preceding paragraphs, one such potential gap is the issue of when a driver is available but between trips. Auto insurers would view that as excluded from coverage under most or all livery exclusions; but the Applicant is unclear at best as to whether its Excess Liability Policy would provide coverage during this time.

Such coverage uncertainty and gaps presents a significant harm to consumers, and the Insurance Federation urges the PUC to make sure that harm is scrutinized and avoided. The uncertainty and gaps also harm the Federation's auto-writing members and their policyholders. Under the insurance provisions envisioned by the Applicant, personal auto insurers would be brought into liability claims they never anticipated, and with related costs (both administrative and potentially claims liability) they never calculated. That is an adverse impact on our auto-insuring members, to be sure. It is also an adverse impact on the policyholders and claimants of those insurers: Uncertainty and unanticipated costs and claims mean higher rates for all.

The Insurance Federation recognizes the Application is one for experimental service, evidencing the innovation of its proposed ride-sharing enterprise. That experiment, however, does not justify – and nothing in the Application suggests it should – any erosion in the PUC's insurance requirements for passenger carriers. While the innovation proposed in this Application may lead to market innovations in fulfilling the insurance requisites of Section 32.11, they do not merit diluting, ignoring or circumventing those requisites. The improvements and innovations promoted by the Applicant can, should and must be provided in compliance with the PUC's insurance requirements, however experimental its enterprise may be.

This is not a case of a "new economy" service conflicting with an "old economy" insurance requirement. To the contrary, the insurance required in Section 32.11 is just as needed in this service as in traditional passenger carrier services; and it

can be just as practically, clearly and directly provided by the Applicant. The problem is not some incompatibility between the Applicant's service and the PUC's insurance requisite; the problem is the way the Applicant proposes to fulfill that requisite.

Accordingly, the Insurance Federation recommends the PUC disapprove this Application. It evades rather than fulfills the insurance requirements of Section 32.11 of the PUC's regulations. That section is meant to provide the certitude of insurance. This Application provides just the opposite. It creates gaps, uncertainties and delays in that required coverage, setting up obstacles and uncertainties for consumers seeking resolution of liability claims and creating significant liability exposure and cost for our auto-writing members who insurer the drivers as provided in the Application.

3. The Insurance Federation's recommended amendments to this Application

The Insurance Federation recognizes the appeal of ride-sharing programs and TNCs as envisioned by the Applicant, and there are a myriad of ways these services can be offered while satisfying the PUC's insurance requirements. For instance, the Applicant could provide primary coverage for its drivers in the amounts set forth in Section 32.11, and ensure that such coverage applies when its drivers are logged on with it or otherwise in the process of fulfilling and returning from a service performed while operating for it. There are other market innovations under way that could also fulfill the PUC's insurance requirements.

Should the Applicant amend its filing to provide such coverage, the Insurance Federation would withdraw this Protest.

Until it does so, however, the PUC should not allow for the erosion of its insurance requisites. Doing so would harm the Insurance Federation's auto-writing members as well as the drivers and passengers counting on accountable and accessible insurance from any PUC-approved passenger carrier.