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May 27, 2014

MAY 27 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ECM
VIA ELECTRONIC FILING

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

**Re: Application of Lyft, Inc. (Experimental Service in Pennsylvania);
A-2014-2415047**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Preliminary Objections of Lyft Inc. to Various Protests concerning the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to Lyft, Inc.

lmc
Enclosure

e: Chief Administrative Law Judge Charles E. Rainey, Jr. (via e-mail and First-Class Mail)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 27 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: Application of Lyft, Inc.

Docket No. A-2014-2415047

**PRELIMINARY OBJECTIONS OF LYFT INC.
TO VARIOUS PROTESTS**

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Lyft, Inc. ("Applicant" or "Lyft"), by undersigned counsel and pursuant to 52 Pa. Code § 5.101(a)(2), respectfully submits these Preliminary Objections asking for dismissal of the Protests filed at the above-captioned docket by Accone Trans Co., AF Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BM Enterprises, Inc., t/a A.G. Taxi, BNA Cab Co., BNG Cab Co., BNJ Cab Co., Inc., Bond Taxi, Inc., BPS Trans, Inc., Double A Cab. Co., Executive Transportation, Inc., t/a Luxury Sedan, FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., Germantown Cab Company, GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., LAN Trans Co., Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Trans, Inc., MG Trans Co., Inc., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., S&S Taxi Cab, Inc., SABA Trans, Inc., SAJ Trans, Inc., Sawink, Inc., t/a County Cab, SF Taxi, Inc., Shawn Cab, Inc., t/a Delaware County Cab, Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., Valtrans, Inc., VB Trans, Inc., VSM Trans, Inc., AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dec Dec Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc. (the "Taxicab Companies") due to numerous failures to conform to the Commission's Regulations. 52 Pa. Code § 5.101(a)(2).

2. On April 3, 2014, Lyft filed an Application at the above-captioned docket ("Application") requesting Commission authority to offer experimental service in the Commonwealth of Pennsylvania pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, the Taxicab Companies filed 44 identical Protests, with an additional 6 identical Protests following on May 20, 2014. The 50 Protests differ only in the insertion of each Taxicab Company's business name and the description of the Taxicab Company's operating authority.¹ Moreover, the same counsel filed each of the 50 Protests. Accordingly, and consistent with the Commission's regulations favoring judicial efficiency, Lyft submits Preliminary Objections jointly addressing the identical Protests. See 52 Pa. Code § 1.2 (supporting "the just, speedy and inexpensive determination" of Commission proceedings).² Lyft further affirms that each of the Taxicab Companies received service of these Preliminary Objections consistent with the procedures set forth in Section 1.54 of the Commissions Regulations. 52 Pa. Code § 1.54.

3. For the reasons explained below, Lyft objects to the Taxicab Protests as follows:

A. The Taxicab Protests Are Deficient and Should be Dismissed

4. The Commission should dismiss the Taxicab Protests pursuant to 52 Pa. Code § 5.101(a)(2) because each Protest fails to conform to the Commission's Regulations requiring that

¹ Of the 50 Taxicab Companies, all but 41 claim to authority granted by the Philadelphia Parking Authority ("PPA") to offer call or demand basis within the City of Philadelphia. The following 8 Taxicab Companies claim PUC Authority to offer call or demand basis as follows: (1) BM Enterprises., t/a A.G. Taxi – Bucks and Montgomery Counties; (2) Bucks County Services, Inc. – Bucks, Montgomery, and Philadelphia Counties; (3) Dee Dee Cab Company; Delaware and Philadelphia Counties; (4) Sawink, Inc. t/a County Cab – Delaware County; (5) Rosemont Taxicab Co., Inc. – Delaware County; (6) Germantown Cab Company – Philadelphia and Montgomery County; (7) Shawn Cab, Inc. – Delaware County. One additional Taxicab Company, Executive Transportation, Inc. t/a Luxury Sedan, claims PUC and PPA Authority to offer limousine service in the City of Philadelphia and throughout the Commonwealth.

² As the Taxicab Protests are substantively identical, Lyft cites to the 50 Protests interchangeably as the "Taxicab Protests."

protests to applications to transport passengers contain: (1) "the name, business address, and telephone number of the protestant;" and (2) "a list of all Commission docket numbers under which the protestant operates, accompanied by a copy of any portion of the protestant's authority upon which its protest is predicated." See 52 Pa. Code § 5.52(b) *ref'g* 52 Pa. Code §§ 3.381(c)(1)(i)(A)(II) and (V). As the Taxicab Companies fail to satisfy both requirements, the Protests should be dismissed consistent with Section 5.101(a)(2) of the Commission's Regulations. 52 Pa. Code § 5.101(a)(2).

a. As stated above, protestants to an application to transport passengers are required to furnish the identifying information for the protestant, including a name, business address, and telephone number. See 52 Pa. Code § 5.52(b) *ref'g* 52 Pa. Code § 3.381(c)(1)(i)(A)(II). Each of the Taxicab Protests provide identifying information for counsel only. This failure to conform the Protests to the Commission's Regulations, particularly in light of other deficiencies of the Taxicab Protests, warrants dismissal of the Protests.

b. The Taxicab Protests also fail to furnish evidence of Commission or PPA authority to operate. The Commission's Regulations clearly mandate that Protests to applications to transport passengers include a list of any all Commission docket numbers under which the protestant operates, accompanied by a copy of **any portion of the protestant's authority upon which its protest is based**. See 52 Pa. Code § 5.52(b) *ref'g* 52 Pa. Code § 3.381(c)(1)(i)(A)(V) (Emphasis added). The Taxicab Protests state that each Taxicab Company is authorized to offer call or demand service (or in one case, limousine service) in or outside of Philadelphia, but fail to identify the docket numbers for any PUC authority or furnish copies of PUC or PPA authority related to this Application.

c. As each of the Taxicab Protests is deficient and improperly filed, Lyft requests that the Commission dismiss the Protests. 52 Pa. Code § 5.101(a)(2).

B. The Taxicab Companies Have No Direct and Immediate Interest In This Proceeding and Therefore Lack Standing to Protest the Application

5. Alternatively, the Commission should dismiss the Taxicab Protests pursuant to 52 Pa. Code § 5.101(a)(2) because each Protest fails to conform to the Commission's Regulations requiring that protests to any application "set forth facts establishing the protestant's standing to protest." *See* 52 Pa. Code § 5.52(a)(3). To establish standing, a protestant must furnish evidence of an interest that is direct, immediate, and substantial. *Application of Consumers Pennsylvania Water Company - Shenango Valley Division*, Opinion and Order, Docket No. A-212750F0007 (January 11, 2011), p.9 (hereinafter "*Consumers*"). A general interest in compliance with the law is insufficient to confer standing to protest an application. *In re PECO Energy Co.*, slip op., Docket No. A110550F0160 (July 18, 2005), p. 8. (hereinafter "*PECO*"). With regard to transportation proceedings, the Commission has specifically found that carriers engaged in a specific type of common carriage, lack standing to protest or intervene in proceedings where an applicant proposes to offer another variant of common carriage, distinct from that offered by the protestant. *Application of K&F Medical Transport, LLC*, Initial Decision, Docket No. A-2008-2020353 (April 25, 2008) (hereinafter, "*K&F Medical Transport*").³ Additionally, where there is no issue of material fact, the Commission is authorized to dismiss a protest for lack of standing as a matter of law. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A review of the Taxicab Protests shows that the facts are not in dispute as to the service offered by Lyft or the services offered by the Taxicab Companies. As Lyft is not proposing to offer call or demand or limousine service, the

³ The Initial Decision issued at Docket No. A-2008-2020353 was made final by operation of law on July 8, 2008. *See Application of K&F Medical Transport, LLC*, Secretarial Letter, Docket No. A-2008-2020353 (July 8, 2008).

interests of the Taxicab Companies are not directly or potentially affected by the Application and the Protests should be dismissed for lack of standing.

a. The Commission has repeatedly determined that authority to offer a specific type of transportation service shall not confer standing to protest applications for other variants of transportation service. In *K&F Medical Transport*, the Commission dismissed a Protest on such grounds, adopting the following analysis from the Initial Decision issued by the presiding Administrative Law Judge ("ALJ"):

In its Protest, Germantown admits to having the right to transport, as a common carrier, by motor vehicle, persons upon call or demand between certain points in the City and County of Philadelphia. Although the service territory of Protestant may overlap with the service territory delineated in K & F's Application, the fact remains that Protestant is a common carrier providing service upon call or demand, and does not hold the authority, issued by this Commission, to provide paratransit service as a contract carrier. **Because Protestant provides a different type of service from those requested in K & F's Application, Protestant's operating rights do not stand in actual or potential conflict with the authority sought by the Applicant.** For the reasons stated above, I find that Germantown lacks standing to protest the Application. Germantown's Protest is deficient on its face and will be dismissed on that ground.

K&F Medical Transport, p. 8 (Emphasis added); *see also Re Capitol Bus Company*, 53 PA P.U.C. 590, (1979) (finding that call or demand authority conferred no standing to protest scheduled route service application). In this case, Lyft has applied for authority to offer experimental transportation network service, defined in the Application as follows:

A Transportation Network Company ("TNC") as referenced herein refers to a company offering transportation network service through a mobile software application, to connect individuals seeking transportation with qualified drivers using their own insured vehicles.

Application, Attachment A, p. 1 (Citations omitted). The Taxicab Protests do not dispute the factual nature of the proposed TNC service. *See* Taxicab Protests, ¶¶ 15-21. Rather, the Taxicab Companies seek a legal determination that the proposed service is fundamentally indistinguishable

from existing standard transportation services and therefore not experimental. *Id.* Because the underlying facts surrounding the proposed service are not in dispute, the Commission is authorized to dismiss the Taxicab Protests for lack of standing as a matter of law.

b. As a matter of law, the proposed TNC service is not call or demand service. Call or demand service is specifically defined under both PUC and PPA authority as "[l]ocal common carrier service for passengers, rendered on either an exclusive or nonexclusive basis, where the service is characterized by the fact that passengers **normally hire the vehicle and its driver either by telephone call or by hail, or both.**" 52 Pa. Code § 29.13; 53 Pa. C.S.A. § 5701. Again, the Taxicab Companies do not dispute that the proposed service would not allow passengers to hire vehicles by telephone call or by hail. *See* Taxicab Protests, ¶¶ 15-21. Therefore, the proposed service does not meet the legal definition of call or demand service.

c. The Commission has also confirmed that use of App-based technology in place of hiring by telephone call or hail removes TNC service from the legal definition of call or demand service and constitutes experimental service under Section 29.13 of the Commission's Regulations. The Commission recently granted an application for TNC service filed by Yellow Cab Company of Pittsburgh, Inc. ("Yellow Cab"), and made the following finding:

The proposed experimental service can be seen as an extension of existing motor carrier passenger transportation services, namely limousine and call or demand. However, we believe that sufficient differences exist to distinguish these existing motor carrier passenger transportation services from the proposed experimental service; **the main distinguishing feature here is that Yellow Cab proposes to use an App-based technology to arrange the motor carrier passenger transportation service so as to allow for a wider ranging, faster and more user friendly scheduling of transportation service.**

Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X, Order, Docket No. A-2014-2410269 (May 22, 2014) p. 6 (hereinafter "Yellow Cab Order"). While the Commission cautioned

that the Yellow Cab Order would not convey categorical approval to all TNC business models, the Order confirmed that the use of App-based technology to arrange motor carrier passenger transportation is the key factor distinguishing TNC services from call or demand or limousine services. *Id.*

d. As with Yellow Cab, Lyft proposes to use App-based technology to arrange motor carrier passenger transportation. Although the Taxicab Companies dispute the legal classification of such service, they do not dispute that Lyft would not directly provide motor carrier transportation, but would App-based technology to arrange motor carrier transportation. *See Taxicab Protests*, ¶¶ 11, 18-21. Conversely, the Taxicab Companies offer only call or demand or limousine service. *See id.* ¶ 3. As call or demand or limousine service providers, the Taxicab Companies' interest in the Application's compliance with the Commission's Regulations, including insurance and fitness requirements, amounts to a general interest in compliance with the law, which is insufficient to confer standing. *See Taxicab Protests*, ¶¶ 30-32; *cf. PECO*, p. 8 (dismissing protest for lack of standing where "asserted interest does not go beyond the interest of all citizens in seeking compliance with the law").

e. Consistent with Commission precedent that a protestant authorized to provide a service distinct from the service offered by applicant has no standing to protest, Lyft requests that the Commission dismiss the Taxicab Protests for lack of standing. *See K&F Medical Transport*, p. 8 (Emphasis added); *see also Re Capitol Bus Company*, 53 PA P.U.C. 590, (1979).

C. The Taxicab Protests Include Impertinent Matter and Should be Dismissed

6. The Taxicab Companies demand that Applicant, pursuant to Section 333(c) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 333(c) "furnish Protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any against the services of Protestant." *Taxicab Protests*, ¶ 35. Section 333

of the Public Utility Code states that "[a]t the prehearing conference or at some other reasonable time prior to the hearing, which may be established by commission rule, **each party to the proceeding** shall make available to the other parties the names of the witnesses he expects to call and the subject matter of their expected testimony." 66 Pa. C.S. § 333(c) (Emphasis added). Section 333(c) does not authorize the Taxicab Companies to demand such information from Lyft through a protest and the demand is further outside the scope of matter authorized for inclusion in a protest under Section 5.52 of the Commission's Regulations. Such impertinent demands are indicative of bad faith and merit dismissal of the Taxicab Protests.

D. Several of the Taxicab Protests Were Untimely Filed and Should Be Dismissed

7. In addition to the 44 Protests filed on May 5, 2014, 6 protests filed by AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dee Dee Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc. ("Late Protestants") were filed on May 20, 2014 and *should be dismissed for failure to conform to the Commission's Regulations requiring timely filing of protests.* 52 Pa. Code §§ 101(a)(2), 5.53, 3.381(c)(1)(ii).

a. Public Notice of the Application was published in the Pennsylvania Bulletin on April 19, 2014, specifying that all protests and petitions to intervene must be filed with the Commission by May 5, 2014 and served upon the Applicant. The Late Protestants did not file protests until May 20, 2014, fifteen (15) days out of time. Further, three of the Late Protestants, Rosemont Taxicab Co., Inc., Jaydan, Inc., and Ronald Cab, Inc., t/a Community Cab failed to serve Lyft with copies of the late-filed protests as required by the Commission's Regulations. 52 Pa. Code § 3.381(c)(1)(i)(A).

b. The Commission is authorized to accept late-filed protests only for good cause shown. 52 Pa. Code 3.381(c)(1)(ii). The Commission has exercised this authority where the protestant meets **all** of the following criteria: "(1) the protestant has a reasonable excuse for its

untimely filing; (2) the proceeding is contested at the time of filing the protest; (3) the grant of intervention will not delay the orderly progress of the case; and (4) the grant of intervention will not significantly broaden the issues or shift the burden of proof." *Re. Milton Transportation, Inc.*, 56 Pa. PUC 623 (1982).

c. The Late Protestants have not offered any reasonable excuse for the late-filed protests. Notably, the Commission recently addressed similar circumstances and dismissed protests filed two days out of time in a contested proceeding, where the protestant offered no valid or reasonable justification for the late filing. *Application of Lifestar Response of NJ-Lifestar*, Final Order, Docket No. A-2013-2352953 (May 20, 2014) (approving Initial Decision issued on April 15, 2014).

d. Accordingly, to the extent the Commission denies the preceding Preliminary Objections, Lyft requests that the Protests of AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dee Dee Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc. be dismissed as untimely filed and therefore failing to conform to the Commission's requirements for proper pleadings. 52 Pa. Code § 101(a)(2); 52 Pa. Code § 5.53; 52 Pa. Code 3.381(c)(1)(ii).

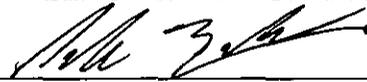
II. CONCLUSION

WHEREFORE, for all the foregoing reasons the Commission should dismiss the Taxicab Protests for failing to conform to Chapter 5 of the Commission's Regulations.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By



James P. Dougherty (Pa. I.D. 59454)

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Dated: May 27, 2014

Counsel to Lyft, Inc.

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Docket No. A-2014-2415047

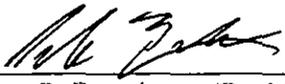
NOTICE TO PLEAD

To: Aceone Trans Co., AF Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BM Enterprises, Inc., t/a A.G. Taxi, BNA Cab Co., BNG Cab Co., BNJ Cab Co., Inc., Bond Taxi, Inc., BPS Trans, Inc., Double A Cab. Co., Executive Transportation, Inc., t/a Luxury Sedan, FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., Germantown Cab Company, GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., LAN Trans Co., Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Trans, Inc., MG Trans Co., Inc., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., S&S Taxi Cab, Inc., SABA Trans, Inc., SAJ Trans, Inc., Sawink, Inc., t/a County Cab, SF Taxi, Inc., Shawn Cab, Inc., t/a Delaware County Cab, Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., Valtrans, Inc., VB Trans, Inc., VSM Trans, Inc., AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dee Dee Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: May 27, 2014

Counsel to Lyft, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Adeolu A. Bakare
Counsel to Lyft, Inc.

Dated this 27th day of May, 2014, in Harrisburg, Pennsylvania.