



McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

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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 the Protest of Billtown Cab. Co., Inc. ("Billtown") 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 

Adeolu A. Bakare

Counsel to Lyft, Inc.

lmc
Enclosure

c: 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.

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Docket No. A-2014-2415047

PRELIMINARY OBJECTIONS OF LYFT INC.
TO PROTEST OF BILLTOWN CAB. CO., INC.

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 Protest filed at the above-captioned docket by Billtown Cab. Co., Inc. ("Billtown") due to 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, Billtown filed a Protest to the Application ("Protest").

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

A. The Protest Is Deficient and Should be Dismissed

4. The Commission should dismiss the Protest pursuant to 52 Pa. Code § 5.101(a)(2) because each Protest fails to conform to the Commission's Regulations requiring that protests to applications to transport passengers contain "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)(V) (Emphasis added). These Regulations clearly mandate that Protests to

applications to transport passengers include a list of any Commission docket numbers authorizing the protestant to operate **and** copies of any authority relating to the protested application. *See* 52 Pa. Code § 5.52(b) *ref'g* 52 Pa. Code §§ 3.381(c)(1)(i)(A)(V). Billtown provides a list of the Commission docket numbers authorizing its existing services and a description of the services, but fails to furnish actual copies of the relevant PUC operating authority. Accordingly, the Protest is deficient, improperly filed, and should be dismissed by the Commission. 52 Pa. Code § 5.101(a)(2).

B. Billtown Has No Direct and Immediate Interest In This Proceeding and Therefore Lacks Standing to Protest the Application

5. Alternatively, the Commission should dismiss the Protest pursuant to 52 Pa. Code § 5.101(a)(2) because it 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(b). To establish standing, a protestant must furnish evidence of an interest directly affected by the proceeding or otherwise in the public interest. *Application of Consumers Pennsylvania Water Company - Shenango Valley Division*, Opinion and Order, Docket No. A-212750F0007 (January 11, 2001), p. 9 (hereinafter "*Consumers*") (Emphasis added); *see* 52 Pa. Code § 5.52(b); *see also* 52 Pa. Code § 5.72. 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*").¹ 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 Protest shows that the facts are not in dispute. As Lyft is not proposing to offer call or demand, parcel or package transportation, paratransit, or airport transfer service, the interests of the Billtown are not directly or potentially affected by the Application and the Protest 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

¹ 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).

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 (as defined by 52 Pa. Code § 29.501-508) using their own insured vehicles (consistent with 52. Pa. Code § 32.11).

Application, Attachment A, p. 1. The Protest does not dispute the factual nature of the proposed TNC service. *See generally* Protest. Rather, Billtown alleges a conflict with its existing authority, which amounts to a legal claim that the proposed service is fundamentally indistinguishable from existing standard transportation services listed in section 29.13 of the Commission's Regulations and is therefore not experimental. *See id* at ¶ 3. Because the underlying facts surrounding the proposed service are not in dispute, the Commission is authorized to dismiss the Protest for lack of standing as a matter of law.

b. As a matter of law, the proposed TNC service is in conflict with Billtown's existing services. Call or demand service is specifically defined by in the PUC's Regulations as "Local 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. Similarly, airport transfer service is defined as "Common carrier service for passengers rendered on a **nonexclusive** basis which originates or terminates at an airport." *Id.* Additionally, paratransit service also defined as the transportation of "persons on a **nonexclusive**, advance reservation basis between points as authorized by the certificate." 52 Pa. Code § 29.353 (Emphasis added). Billtown does not dispute that the proposed service would not allow passengers to hire vehicles by telephone call or by hail or allege that Lyft provides service to individual passengers rather than nonexclusive

mass-transit. *See generally* Protest. Therefore, as a matter of law, the proposed service does not conflict with Billtown's existing certificated services.

c. The Commission has further confirmed that use of App-based technology in place of removes TNC service from the legal definition of other existing motor carrier passenger transportation services 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 Billtown disputes the legal classification of such service, it does not dispute that Lyft would not directly provide motor carrier transportation, but would use App-based technology to arrange motor carrier transportation. *See* Protests, ¶¶ 11, 18-

21. Conversely, Billtown offers various service existing under the Commission's Regulations, which the Commission has distinguished from TNC service. *See id.* at ¶ 3; *see also* Yellow Cab Order, p. 6. As a call or demand, airport transfer, paratransit, or parcel and package delivery service provider, the Billtown's interest in the Application's compliance with the Commission's Regulations, including need and fitness requirements, amounts to a general interest in compliance with the law, which is insufficient to confer standing. *See* Protest, ¶¶ 4-7; *cf. In re PECO Energy Co.*, slip op., Docket No. A110550F0160 (July 18, 2005) (dismissing protest for lack of standing where "asserted interest does not go beyond the interest of all citizens in seeking compliance with the law").

c. 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 Protest 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).

II. CONCLUSION

WHEREFORE, for all the foregoing reasons the Commission should dismiss the Billtown Protest 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)

Adeolu A. Bakare (Pa. I.D. 208541)

McNees Wallace & Nurick LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

jdougherty@mwn.com

abakare@mwn.com

Dated: May 27, 2014

Counsel to Lyft, Inc.

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In Re: Application of Lyft, Inc.

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Docket No. A-2014-2415047

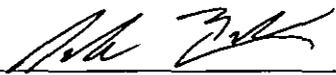
NOTICE TO PLEAD

To: Billtown Cab. 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  _____

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

Adeolu A. Bakare (Pa. I.D. 208541)

McNees Wallace & Nurick LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

jdougherty@mwn.com

abakare@mwn.com

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).

VIA E-MAIL AND FIRST-CLASS MAIL

Lloyd R. Persun, Esq.
Persun and Heim, P.C.
MTR TRANS INC & BILLTOWN CAB
P.O. Box 659
Mechanicsburg, PA 17055-0659
pagelbaugh@persunheim.com

Michael S Henry, Esq.
Michael S. Henry LLC
Concord Limousine, Black Tie Limousine,
Executive Transportation Inc
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@mshenrylaw.com

Paul S. Guarnieri, Esq.
Ray Middleman, Esq.
Malone Middleman, PC
Pennsylvania Association for Justice
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
guarnieri@mlmpclaw.com

David William Donley, Esq.
JB Taxi LLC t/a County Taxi Cab
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

VIA FIRST-CLASS MAIL

Dennis G. Weldon Jr, Esq.
Bryan L. Heulitt Jr., Esq.
Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106

Honorable Harry A. Readshaw
Pa State House of Representatives
1917 Brownsville Road
Pittsburgh, Pa 15210

Ernest J. Delbo
Shamokin Yellow Cab Inc
T/A Shamokin Yellow Cab
212 W. Independence Street
Shamokin, PA 17872

Samuel R Marshall
CEO and President
Insurance Federation of Pennsylvania Inc
1600 Market Street, Suite 1720
Philadelphia, PA 19103

Carl W. Hovenstine
Vice President
Pauls Cab Service Inc.
735 Market Street
Sunbury, PA 17801

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Adeolu A. Bakare
Counsel to Lyft, Inc.

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