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MAY 27 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

May 27, 2014

FCM

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 Paul's Cab Service Inc. ("Paul's Cab") 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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MAY 27 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PRELIMINARY OBJECTIONS OF LYFT INC.
TO PROTEST OF PAUL'S CAB SERVICE 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 Protests filed at the above-captioned docket by Paul's Cab Service Inc. ("Paul's Cab") 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 2, 2014, Paul's Cab submitted a Protest to the Application ("Protest"). The Protest, as filed, was unsigned and deemed unfiled by the PUC. Paul's Cab was given 10 days to file a corrected Protest, which the company did on May 14, 2014.

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

A. <u>The Protest Is Deficient and Should be Dismissed</u>

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). Paul's Cab provides a list of 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. <u>Paul's Cab Has No Direct and Immediate Interest In This Proceeding and Therefore Lacks Standing to Protest the Application</u>

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(a)(3). 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(a)(3); *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 held 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 paratransit service, the interests of the Paul's Cab 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* Protest. Rather, Paul's Cab 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.* 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 not in conflict with Paul's Cab's existing services. *Id.* The Commission's Regulations define paratransit service as "to transport of persons on a **nonexclusive**, advance reservation basis between points as authorized by the certificate." 52 Pa. Code § 29.353 (Emphasis added). The Application confirms that Lyft offers service to individual passengers as opposed to nonexclusive mass-transit. *See* Application, Attachment A, ¶¶IV(A)(2)-(4). Therefore, as a matter of law, the proposed service does not conflict with Paul's Cab'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 Paul's Cab disputes the legal classification of such service, it does not that Lyft would not directly provide motor carrier transportation, but would use App-based technology to arrange motor carrier transportation. *See generally* Protest. Conversely, Paul's Cab offers paratransit services specifically identified under the Commission's Regulations, which the Commission has distinguished from TNC service. *See id.* Exhibit A; *see also* Yellow Cab Order, p. 6. As a paratransit service provider, Paul's Cab's interest in the Application's compliance with the Commission's Regulations, including the "need" threshold for proposed service, amounts to a general interest in compliance with the law, which is insufficient to confer standing. *See* Protest, ¶¶ 4-7; *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").

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).

C. <u>The Protest Must Be Dismissed for Lack of Counsel</u>

6. Under Section 1.21 and 1.22 of the Commission's Regulations establish that individuals may represent themselves in Commission proceedings, only an attorney is permitted to represent a business entity in an adversarial proceeding. 52 Pa. Code §§ 1.21-22. The Protest was filed by Mr. Carl W. Hovenstine on behalf of Paul's Cab. As this proceeding is contested by various protestants and therefore adversarial, any person appearing other than as an individual must be represented by counsel or a certified legal intern. *Id.* Mr. Hovenstine does not appear to be an attorney or certified legal intern. *See* Protest. Accordingly, the Protest is deficient under Section 5.101(a)(2) of the Commission's Regulations must be dismissed. 52 Pa. Code §§ 5.101(a)(2), 1.21-22.

II. CONCLUSION

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

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By _____

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Dated: May 27, 2014

Counsel to Lyft, Inc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

NOTICE TO PLEAD

To: Paul's Cab Service 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)
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Barbara A. Darkes (I.D. No. 77419)
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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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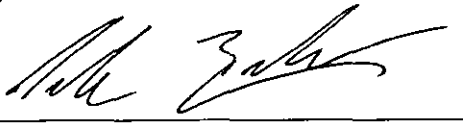

Adeolu A. Bakare
Counsel to Lyft, Inc.

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