



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

RECEIVED

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 Allegheny County);
A-2014-2415045**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Preliminary Objections of Lyft Inc. to the Protest of the Pennsylvania Association for Justice ("PAJ") 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.

Inc
Enclosure

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

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

RECEIVED

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-2014-2415045

~~Docket No. A-2014-2415047~~

PRELIMINARY OBJECTIONS OF LYFT INC.
TO THE PROTEST OF THE PENNSYLVANIA ASSOCIATION FOR JUSTICE

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 dockets by the Pennsylvania Association for Justice ("PAJ") 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 Applications at the above-captioned dockets ("Applications") requesting Commission authority to offer experimental service in Allegheny County and throughout the Commonwealth of Pennsylvania ("Applications") pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, PAJ filed a Protest to the Applications ("PAJ Protest").

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

A. **The PAJ Has No Direct and Immediate Interest In This Proceeding and Therefore Lacks Standing to Protest the Applications**

4. The Commission should dismiss the PAJ Protest pursuant to 52 Pa. Code § 5.101(a)(2) because the 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(b). 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, 2001), 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*"). 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 PAJ Protest shows that the facts are not in dispute. PAJ's interests in this case are indirect, speculative, and fail to exceed the general interest of all Pennsylvania citizens with Applicant's compliance with the law.

a. The criteria required to establish the requisite standing to protest an application under Section 5.52(a)(3) are well-established by Commission precedent. The Commission has articulated the threshold as follows:

A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest, and is substantial if the protestant has a discernible interest other than the general interest of all citizens in seeking compliance with the law. *See Ken R. ex rel. C.R. v. Arthur Z.*, 546 Pa. 49, 682 A.2d 1267 (1996); *In re El Rancho Grande, Inc.*, 496 Pa. 496, 437 A.2d 1150 (1981); *William Penn Parking Garage, Inc. v. Empire Coal Mining & Development, Inc. v. Department of Environmental Resources*, 154 Pa. Cmwlth. Ct. 296, 623 A.2d 897 (1993). **Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding.**

Consumers, p. 9 (Emphasis added); *see* 52 Pa. Code § 5.52(a)(3). Further, with regard to applications for transportation authority, only entities with motor carrier authority in actual or potential conflict with authority sought by the applicant have standing to protest applications for new or expanded authority. *Application of Germanton Cab Company*, slip op, Initial Decision, (Docket No. Docket No. A-2012-2294922 (August 23, 2012), pp. 4-5. (hereinafter

"*Germantown*") (dismissing protest of taxicab trade association because the association did not hold a certificate of public convenience in the affected service territory and could not be aggrieved by the application).¹ The requirement is consistent with Section 3.381(c)(1)(i)(V) of the Commission's Regulations, which mandates that all protestants to applications to transport passengers furnish copies of certificated authority affected by the protested application.

b. As stated in its Protest, 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." Protest, p. 2. Formerly known as the Pennsylvania Trial Lawyers Association, PAJ 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." *Id.*

c. Accepting the facts as stated in the PAJ Protest, PAJ lacks standing to protest the Applications. PAJ alleges that approval of the Applications "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." PAJ Protest, p. 2. However, PAJ is not a certificated motor carrier holding authority in actual or potential conflict with Applicant's proposed service. Therefore, the PAJ's interests in the Applications are indirect and speculative.

d. Even aside from its lack of certificated motor carrier authority, the "injury" asserted by PAJ remains otherwise predicated on contingencies and cannot rise beyond an indirect and general interest in compliance with established laws, which is insufficient to convey standing to a protestant. *See In re PECO*, p. 8; *see also Germantown*, pp. 4-5. If any Lyft drivers engage in negligent conduct in the future, individuals potentially exposed to direct harm resulting therefrom

¹ The Initial Decision issued at Docket No. A-2012-2294922 was made final by operation of law on Nov. 9, 2012. *See Application of Germantown Cab Company*, Final Order, Docket No. A-2012-2294922 (Nov. 9, 2012).

could be Lyft drivers, Lyft passengers, or other motorists. The PAJ member lawyers, as possible counsel for an aggrieved Lyft driver, Lyft passenger, or other motorist, would not be directly, immediately, or substantially affected by the proposed service. Lyft recognizes the importance of maintaining appropriate insurance for the proposed experimental service, but for purposes of establishing standing to protest the Applications, PAJ's interests do not rise beyond a general interest in compliance with established laws, which is insufficient to convey standing to a protestant. *See In re PECO*, p. 8.

e. By way of further example, if the PAJ were permitted to protest the Applications, the PAJ could effectively meet the standing requirement for virtually any administrative docket in the Commonwealth by claiming that a person suffering injury as a result of an administrative adjudication could retain a PAJ lawyer at some future point. This would be an absurd result, and contrary to the Commission's prior finding that mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. *Consumers*, p. 9.

f. Finally, granting the PAJ Protest would not result in any public interest benefit. The indirect and speculative interests identified by PAJ relate to solely insurance requirements applicable to TNC service. *See generally PAJ Protest*. The Commission has already established that it will require entities approved to provide TNC service to have acceptable evidence of insurance on file with the Commission. *Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X, Order*, Docket No. A-2014-2410269 (May 22, 2014), p. 8 (hereinafter "Yellow Cab Order"). Therefore, even the indirect and speculative interests identified by PAJ are adequately represented in this proceeding as evidenced by the Commission's stated commitment to review and monitor insurance requirements for TNC service providers.

g. Consistent with Commission precedent that a protestant must demonstrate standing by showing a direct, immediate, or substantial interest in the subject matter of an application, Lyft requests that the Commission deny the PAJ Protest for lack of standing. 52 Pa. Code §§ 5.101(a)(2), 5.52(a)(3).

B. The PAJ Protest Includes Impertinent and Scandalous Matter and Should be Dismissed

5. Section 5.101(a)(3) of the Commission's Regulations authorize the Commission to dismiss a protest including scandalous or impertinent matter. 52 Pa. Code § 5.101(a)(3). The PAJ Protest includes numerous counts of both scandalous and impertinent matter. The repeated offenses indicate a bad faith intent and merit dismissal of the Protest.

a. The PAJ Protest impertinently alleges that Lyft fails to qualify as a ridesharing service under the Pennsylvania Statutes, despite the fact that the Applications did not request authority to provide such service. PAJ Protest, at ¶ 11 *citing* 55 P.S. § 695.1. Although the Applications referenced Section 695.1 as an example of ridesharing, the entire purpose of the Applications was to obtain Commission authority to offer experimental service in light of the fact that the proposed service differs from all existing transportation services under Pennsylvania law. *See* Applications, Attached A, p. 1 note 2. Therefore, the applicability of Section 695.1 to the proposed service is impertinent.

b. PAJ also adds the scandalous claim that Lyft describes its services as ridesharing to avoid regulatory authority of the Commission and "escape the need to provide comprehensive livery or fare sharing liability insurance on the vehicles used in its TNC ground transportation business." Protest, ¶ 15. To the contrary, Lyft openly and transparently filed detailed Applications with the Commission requesting authority to offer a service incorporating a form of ridesharing not covered by existing law. Contrary to PAJ's scandalous insinuation that Lyft seeks to avoid regulation by the Commission, Lyft desires to work with the Commission to ensure that Lyft

meets the Commission's regulatory requirements for operating TNC service in Pennsylvania, including provision of appropriate insurance coverage.

c. Further, the PAJ Protest requests that Applicant, pursuant to Section 333(c) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 333(c) provide "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." PAJ Protest, ¶ 31. 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 entitle PAJ to such information from Lyft at this time, 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.

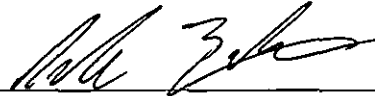
d. These impertinent and scandalous matters are indicative of bad faith and merit dismissal of the PAJ Protest.

II. CONCLUSION

WHEREFORE, for all the foregoing reasons the Commission should dismiss the PAJ 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)

Barbara A. Darkes (I.D. No. 77419)

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

bdarkes@mwn.com

Dated: May 27, 2014

Counsel to Lyft, Inc.

RECEIVED

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-2014-2415045

Docket No. A-2014-2415047

NOTICE TO PLEAD

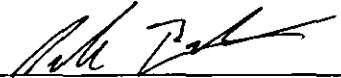
To: Pennsylvania Association for Justice

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)

Barbara A. Darkes (I.D. No. 77419)

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

bdarkes@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

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

RECEIVED


MAY 27 2014

VIA FIRST-CLASS MAIL

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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



Adeolu A. Bakare
Counsel to Lyft, Inc.

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