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May 27, 2014

MAY 27 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

ECM
VIA ELECTRONIC FILING

**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 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 

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.

Docket No. A-2014-2415045

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 Black Tie Star Limousine, Inc. ("Black Tie"), Concord Limousine ("Concord"), and Executive Transportation Inc., t/a Luxury Sedan (Executive Transportation") (collectively the "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 Allegheny County pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, the Companies filed Protests to the Application. The Protests differ only in the insertion of each Company's business name and the description of the Company's operating authority.¹ Moreover, the same counsel filed each Protest. Accordingly, and consistent with the Commission's regulations favoring judicial efficiency, Lyft submits the Preliminary Objections jointly addressing the identical Protests. *See* 52 Pa. Code § 1.2 (supporting "the just, speedy and

¹ As discussed below, the operating authority held by the Companies remains unclear.

inexpensive determination" of Commission proceedings).² Lyft further affirms that each of the 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 Companies' Protests as follows:

A. The Protests Are Deficient and Should be Dismissed

4. The Commission should dismiss the 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 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 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 Protests provide identifying information for counsel only. This failure to conform the Protests to the Commission's Regulations, particularly in light of other deficiencies, warrants dismissal of the Protests.

² As the Company Protests are substantively identical, Lyft cites to the 3 Protests interchangeably as the "Protests."

b. The Protests also fail to furnish evidence of Commission authority to operate in Allegheny County. The Commission's Regulations clearly mandate that Protests to applications to transport passengers include a list 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 Protests include averments of authority, but fail to identify the docket numbers for any PUC authority or furnish copies of PUC authority related to this Application.

c. Additionally, the Protests include inconsistent references to operating authority. Paragraph 2 of each Protest references PUC authority to offer limousine service in the Commonwealth of Pennsylvania. However Paragraph 6 of each Protest references authority to offer call or demand service in Philadelphia.

d. Lyft cannot confirm the authority held by the Companies as the Protests failed to furnish evidence of certificated service. As each of the Protests is deficient and improperly filed, Lyft requests that the Commission dismiss the Protests. 52 Pa. Code § 5.101(a)(2).

B. The 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 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 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*").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 Protests shows that the facts are not in dispute as to the service offered by Lyft or the services offered by the Companies. As Lyft is not proposing to offer limousine or call or demand service, the interests of the 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

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).

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 Protests do not dispute the factual nature of the proposed TNC service. *See* Protests, ¶¶ 15-21. Rather, the 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 Protests for lack of standing as a matter of law.

b. The Commission has confirmed that use of App-based technology removes TNC service from the legal definition of limousine or 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 limousine or call or demand services. *Id.*

c. As with Yellow Cab, Lyft proposes to use App-based technology to arrange motor carrier passenger transportation. Although the Companies dispute the legal classification of such service, they do 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, the Companies offer only limousine or call or demand service. *See id.* ¶ 3. As limousine or call or demand service providers, the Companies' interests 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* 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").

d. 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 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 Protests Include Impertinent Matter and Should be Dismissed

6. The 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." 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 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 Protests.

II. CONCLUSION

WHEREFORE, for all the foregoing reasons the Commission should dismiss the 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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Barbara A. Darkes (I.D. No. 77419)

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Dated: May 27, 2014

Counsel to Lyft, Inc.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: Application of Lyft, Inc.

Docket No. A-2014-2415047

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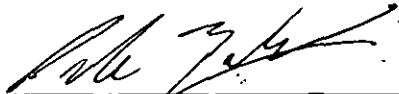
NOTICE TO PLEAD

To: Black Tie Star Limousine, Inc., Concord Limousine, and Executive Transportation Inc., t/a
Luxury Sedan.

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)
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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).

VIA E-MAIL AND FIRST-CLASS MAIL

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Adeolu A. Bakare
Counsel to Lyft, Inc.

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

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