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May 27, 2014

MAY 27 2014

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 the Protest of JB Taxi LLC t/a County Taxi Cab ("JB Taxi") 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.

Imc
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 THE PETITION FOR LEAVE TO INTERVENE AND PROTEST
OF JB TAXI LLC T/A COUNTY TAXI CAB**

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 Petition for Leave to Intervene ("Petition") and Protest ("Protest") (collectively "Petition and Protest")¹ filed at the above-captioned docket by JB Taxi LLC t/a County Taxi Cab ("JB Taxi") 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, JB Taxi filed the Petition and Protest to the Application.

¹ As the Petition incorporates the Protest by reference, all references to the Protest should be construed as references to the Petition and Protest and all challenges to standing with regard to the Protest should be applied with equal force to the Petition. See Petition, ¶ 7(b).

3. The Commission should dismiss the 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(a)(3); *see also* 52 Pa. Code § 5.72 (establishing the same requirement for Petitions to Intervene). 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*").² Where there is no issue of material fact, the Commission is authorized to dismiss a petition to intervene or 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 JB Taxi possess no authority to serve Allegheny County, the proposed service is not in actual or potential conflict with JB Taxi's existing call or demand service. Additionally, as Lyft does not intend to offer call or demand service, JB Taxi's interests

² 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).

are not directly or potentially affected by the Application. For these reasons, the Petition and Protest should be dismissed for lack of standing.

a. The criteria required to establish the requisite standing to protest an application under Section 5.52 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.; 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. 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).³ The requirement is consistent with Section 3.381(c)(1)(i)(V) of the Commission's Regulations, which mandates that

³ The Initial Decision issued at Docket No. A-2012-2294922 was made final by operation of law on Nov. 9, 2012. See *Application of Germanton Cab Company*, Final Order, Docket No. A-2012-2294922 (Nov. 9, 2012).

all protestants to applications to transport passengers furnish copies of certificated authority affected by the protested application.

b. In this case, JB Taxi holds only authority to serve areas outside of Allegheny County. The JB Protest establishes beyond any doubt that JB Taxi is authorized to provide call or demand service only in Beaver, Lawrence, Mercer, and Crawford Counties. Protest, ¶ 4. As the Application proposes to offer experimental service only in Allegheny County, JB Taxi has no direct, immediate or substantial interest in the proposed service. Therefore, the Commission should grant this preliminary objection and dismiss the Petition and Protest.

c. Further, even if JB Taxi's certificated service territory did overlap with that requested by Lyft, 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 (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. JB Taxi does not dispute the factual nature of the proposed TNC service. Rather, JB Taxi draws a legal conclusion that the proposed service is fundamentally indistinguishable from existing standard transportation services and therefore not experimental. Protest, ¶ 4. 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.

d. As a matter of law, the proposed TNC service is not call or demand service. 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. Again, JB Taxi does not dispute that the proposed service would not allow passengers to hire vehicles by telephone call or by hail. *See generally* Petition and Protest. Therefore, the proposed service does not meet the legal definition of call or demand service.

e. 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 services. *Id.*

f. As with Yellow Cab, Lyft proposes to use App-based technology to arrange motor carrier passenger transportation. Although the Protest expresses concern with the legal classification of the proposed 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 generally*, Petition and Protest. Conversely, JB Taxi offers only call or demand service. *See id.* ¶ 5. As a call or demand service provider, JB Taxi's interest in the Application's compliance with the Commission's Regulations, including fitness requirements, amounts to a general interest in compliance with the law, which is insufficient to confer standing. *See* JB Taxi Protest, ¶ 4; *cf. PECO*, p. 8, *Germantown*, p. 9.

g. 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 Petition and Protest for lack of standing. *See K&F*

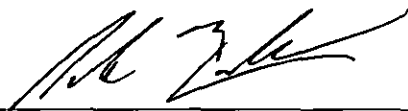
Medical Transport, p. 8 (Emphasis added); *see also Re Capitol Bus Company*, 53 PA P.U.C. 590, (1979).

WHEREFORE, for all the foregoing reasons the Commission should dismiss the JB Taxi Petition for Leave to Intervene and 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)

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Dated: May 27, 2014

Counsel to Lyft, Inc.

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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

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NOTICE TO PLEAD

To: JB Taxi LLC t/a County Taxi Cab

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

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