BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF **A-2014-2415047**

LYFT, INC.

AMENDED PROTEST OF ODESSA TAXI, INC.

The above Protestant, by and through its attorney, Michael S. Henry, Esquire, hereby objects to the approval of the above application for the following reasons:

I. PARTIES

1. Applicant, Lyft, Inc. ("Lyft"), is a privately held California-based transportation network company[1] whose mobile-phone application facilitates on-demand ridesharing by enabling passengers who need transportation to demand immediate service from private non-professional drivers who charge a fee for their service.

[1] A transportation network company ("TNC") is defined by the California Public Utilities Commission as "a company that uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles." Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, California Public Utilities Commission, Rulemaking 12-12-11 (Filed December 20, 2012) (copy attached).

2. Protestant, Odessa Taxi, Inc., is a Pennsylvania corporation and a public utility that holds Certificate of Public Convenience No. 1023811-01, issued by the Philadelphia Parking Authority ("PPA" or "Authority"), granting the following authority:

> To transport, upon call or demand, persons and their baggage; and parcels, packages, and property, at the same basic PPA TLD approved metered rates; between points in the city and county of Philadelphia to points in Pennsylvania; and from points in Pennsylvania to points in the city and county of Philadelphia, if the request for services for such transportation is received by call to its PPA Certified Dispatch Association, limited to one (1) vehicle per medallion.

Protestant's address and business telephone are as follows:

2301 Church Street
Philadelphia, Pennsylvania 19124
(215) 831-0666

II. THE APPLICATION

3. The Application states that the Applicant is seeking "the right to begin to transport, as a common carrier, by motor vehicle, persons in ... experimental service [by means of a] Transportation Network Company for passenger trips between points in Pennsylvania."

4. But, the proposed service, as described in the application, is, in fact, the commercial use of a mobile software application to broker ridesharing arrangements between prospective passengers and private individuals, without certificates of public convenience, who will use their

own vehicles to provide call or demand service or limousine service between points in Pennsylvania.

III. STANDING

5. In order to have standing to protest a motor carrier application, a protestant must have some operating authority in actual, or potential, conflict, with the authority sought by an applicant.

6. In the present case, Protestant has standing to protest the application, notwithstanding the Applicant's characterization of the proposed service as "experimental", because the proposed service will facilitate the provision of illegal call or demand service in Philadelphia by private individuals without certificates of public convenience and such service is in actual, or potential, conflict with Protestant's call or demand authority in Philadelphia.

7. At the very least, Protestant has standing to challenge the Applicant's claim that the proposed service is, in fact, motor carrier service, rather than a brokerage service, and to present evidence that the proposed service will facilitate the provision of transportation that is in actual, or potential, conflict with Protestant's service.

IV. OBJECTIONS TO THE APPLICATION

A. APPLICANT'S REQUEST FOR AUTHORIZATION TO PROVIDE SERVICE AS A MOTOR CARRIER

SHOULD BE DENIED BECAUSE IT WILL ACT ONLY AS A BROKER AND WILL NOT PROVIDE ANY TRANSPORTATION SERVICE ITSELF

8. The Public Utility Code defines the term "common carrier" as follows:

> Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, ***but shall not include*** contract carriers by motor vehicles, or ***brokers***, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

66 Pa. C.S. §102 (emphasis added).

9. The Public Utility Code defines the term "motor carrier" as "[a] common carrier by motor vehicle, and a contract carrier by motor vehicle." 66 Pa. C.S. §102.

10. The Public Utility Code defines the term "broker" as follows:

> Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement

> with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. §2501

11. In its application, the Applicant indicates that it will use its mobile software application to facilitate ridesharing arrangements between prospective passengers and private individuals using their own vehicles, who will provide the actual transportation service; the Applicant does not propose to provide transportation service itself.

12. Based on the foregoing, Applicant proposes to function as a "broker" within the meaning of 66 Pa. C.S. §2502 and not as a "motor carrier" within the meaning of 66 Pa. C.S. §102.[2]

13. Accordingly, the application should be denied because the Commission may not authorize a person or corporation to provide motor carrier service where the person or corporation only proposes to procure such service on behalf of third parties, but does not propose to provide such service itself, either directly or indirectly.

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[2] It should be noted that the Commission's regulations prohibit a broker to "employ or engage a carrier who or which is unable to lawfully provide the transportation under his contracts, agreements, or arrangements therefor." 52 Pa. Code §39.5 (pertaining to carrier's operating authority). In other words, a broker cannot procure transportation services from a motor carrier that does not have a certificate of public convenience authorizing the type of transportation that is being requested.

B. THE APPLICATION SHOULD BE DENIED BECAUSE THE PROPOSED SERVICE DOES NOT DIFFER, IN ANY MEANINGFUL WAY, FROM OTHER MOTOR CARRIER SERVICES AND THEREFORE DOES NOT QUALIFY AS "EXPERIMENTAL SERVICE" WITHIN THE COMMISSION'S SCHEME OF CLASSIFICATION FOR SERVICE PROVIDED BY COMMON CARRIERS OF PASSENGERS

14. Commission has adopted a scheme of classification for service provided by common carriers of passengers, including "experimental service", under 52 Pa. Code §29.13, which states:

> The following standard classification of types of service furnished by common carriers of passengers is adopted, and the following is hereby recognized as a standard class of common carrier service. The rights and conditions pertaining to a standard class of service are specified in Subchapter D (relating to supplemental regulations). A certificated service which does not completely correspond to a standard class may be governed, where practicable, by the regulations for the standard class to which it most nearly corresponds:
>
> (1) *Scheduled route service.* Common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, wherein the vehicles delivering the service operate according to schedules along designated routes.
>
> (2) *Call or demand service.* Local common carrier service for passengers, rendered on either an exclusive or a 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.
>
> (3) *Group and party service.* Common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a

nonexclusive basis for tour or sightseeing service and special excursion service.

(4) *Limousine service.* Local, nonscheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance.

(5) *Airport transfer service.* Common carrier service for passengers rendered on a nonexclusive basis which originates or terminates at an airport.

(6) *Other services: paratransit, experimental.* Common carrier service for passengers which differs from service as described in any one of the five classes set forth in paragraphs (1)—(5) and is provided in a manner described in the certificate of public convenience of the carrier and is subject to restrictions and regulations are stated in the certificate of the carrier or in this chapter.

15. In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service. 52 Pa. Code §29.352.

16. Notwithstanding the fact that the application actually requests authorization to act as a "broker", so that the Applicant may facilitate ridesharing arrangements between prospective passengers and private individuals using their own vehicles, the actual service that will be provided by these individuals is not "experimental" within the meaning of 52 Pa.

Code §29.13 because it does not differ, in any significant way, from "call or demand service" or "limousine service", as defined thereunder.

17. As noted above, "experimental service" is defined negatively, as a service that *differs* from "scheduled route service", "call or demand service", "group and party service", "limousine service" and "airport transfer service."

18. But nothing in the application distinguishes the proposed service, in any meaningful way, from the other motor carriers services defined under the Commission's scheme of classification for such services.

19. In the present case, the Applicant describes the proposed transportation as "prearranged" (i.e. advance reservation) service, which does not distinguish it, in any meaningful way, from "limousine service"

20. But the Applicant also states that its software enables "individuals seeking transportation with individuals willing to provide such transportation in real time … to quickly and efficiently communicate with [them]", which does not distinguish it, in any meaningful way, from "call or demand" service.

21. Based on the foregoing, the application should be denied because the proposed service does not differ, in any meaningful way, from

other motor carrier services and, therefore, does not fall within the definition of “experimental service” under 52 Pa. Code §29.13.

C. THE APPLICATION SHOULD BE DENIED BECAUSE IT PROPOSES TO FACILITATE COMMERCIAL TRANSPORTATION SERVICES UNDER TO RIDESHARING ARRANGEMENTS WITHOUT CERTIFICATED SERVICE PROVIDERS

22. The Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9, defines the term “ridesharing arrangement” as follows:

> As used in this act, "RIDESHARING ARRANGEMENT" shall mean any one of the following forms of transportation:
>
> (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver ***who is not engaged in transportation as a business.*** The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
> (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

23. Individuals or entities that provide transportation services under a ridesharing arrangement are not subject to motor carrier laws and are not considered commercial vehicles. 66 P.S. §695.2 and §695.99.

24. But a transportation provider that receives compensation for its services is no longer doing so pursuant to a "ridesharing arrangement" and must first obtain a certificate of public convenience prior to beginning service. 66 Pa. C.S.. §1101 and 53 Pa. C.S. §§ 5714 and 5741.

25. Accordingly, the application should be denied because it is illegal to facilitate commercial transportation services pursuant to ridesharing arrangements that will be provided by individuals or entities that do not possess certificates of public convenience.

D. THE APPLICATION SHOULD BE DENIED BECAUSE APPLICANT CANNOT SUSTAIN ITS BURDEN THAT IT WILL BE ABLE TO OBTAIN INSURANCE COVERAGE THAT COMPLIES WITH THE COMMISSION'S REGULATIONS

26. The Commission is empowered to require motor carriers to obtain insurance it deems necessary for the protection of persons or property of their patrons and the public. 66 Pa. C.S. §512.

27. The application proposes to facilitate commercial transportation services pursuant to ridesharing arrangements, where the service providers will be non-professional drivers using their own vehicles.

28. All individual insurance policies for private automobiles contain "livery clauses" that exclude coverage for accidents or injuries that occur while the vehicle is being used for commercial purposes.

29. The application also proposes that the Applicant will obtain excess insurance to cover liability arising from the operation of the service providers vehicles.

30. But Applicant cannot procure insurance that covers the operation of vehicles owned by private individuals and in which it has no insurable interest.

31. Accordingly, the application should be denied because the Applicant cannot sustain its burden of providing that it can obtain insurance coverage that complies with the Commission's regulations.

V. GENERAL AVERMENTS

32. In addition to the foregoing, Protestant objects to approval of the application because the Applicant cannot sustain its burden of proof pursuant to 52 Pa. Code §41.14 as to need and fitness.

33. Protestant also avers that approval of the application will endanger or impair Protestant's operations to the extent that, on balance, the granting of the application would be contrary to the public interest.

34. Protests to this Application are due on or before May 5, 2013; therefore, this protest is timely and Protestant is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

35. Pursuant to 333(c) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §333(c), demand is made upon Applicant to 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 the Protestant.

36. Additionally, demand is made upon Application to furnish Protestant's counsel with proof of need for service and financial responsibility.

37. Protestant is not aware of any agreement that will cause it to withdraw its protest.

WHEREFORE, Protestant, respectfully requests this Honorable Commission to deny the Application.

Respectfully submitted,

Michael S. Henry

Michael S. Henry
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Philadelphia, PA 19145
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CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I served a copy of the foregoing Protest on the following in accordance with the regulations of the Commission or in a manner agreed upon by the recipient in advance:

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MTR Trans & Billtown Cab
P.O. Box 659
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pagelbaugh@persunheim.com

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Adeolu A Bakare, Esquire
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Michael S. Henry

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Date: June 5, 2014

VERIFICATION

MICHAEL S. HENRY, ESQUIRE verifies that he is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Michael S. Henry
Michael S. Henry

Dated: June 5, 2014