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412.331.8998

June 6, 2014

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Docket No. A-2014-2415045, Application of Lyft, Inc.

Dear Secretary Chiavetta:

Transmitted herewith is Protestant's Answer to Preliminary Objections of Lyft Inc. to the Petition for Leave to Intervene and Protest of JB Taxi LLC t/a County Taxi Cab.

Very truly yours,

/s/ electronically filed

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2415045
APPLICATION OF LYFT, INC

ANSWER TO PRELIMINARY OBJECTIONS OF LYFT INC.
TO THE PETITION FOR LEAVE TO INTERVENE AND
PROTEST OF JB TAXI LLC T/A COUNTY TAXI CAB

Comes now JB Taxi LLC t/a County Tax Cab (Protestant) and files this Answer to the Preliminary Objections of Lyft, Inc. in the above-captioned matter. This Answer is filed pursuant to 52 Pa.Code §5.101(f.) Protestant challenges each of the Preliminary Objections and argues that no valid basis has been stated for the relief requested by Applicant. In support, protestant further pleads as follows:

1. Protestant has complied in all material respects with the requirements for seeking leave to intervene and to protest. With respect to leave to intervene, Protestant's petition conforms to the requirements set forth at 52 Pa.Code §§5.71 through 5.74, and presents a sound basis to conclude that intervention by existing providers of passenger transportation service may be in the public's interest, and accordingly, permitted by 52 Pa.Code §572(a)(3). Specifically, Protestant avers that the public's interest will be materially harmed by the impact of experimental service, as proposed by Lyft, upon existing transportation providers, including Protestant. (Protestant's petition at Paragraphs 7(d) and (f).) Additionally, if existing providers are deprived of the opportunity to participate, Protestant believes that the record is not likely to be adequately and completely developed. (Protestant's petition at Paragraphs 7(e) and (g).) For these reasons, the Commission should find that good cause exists to grant leave to

intervene on the basis that it is necessary and appropriate to the administration of the Public Utility Code.

With respect to the contents of its protest, Protestant has met the Commission's standard as set forth 52 Pa Code 5.51 because Protestant has complied with each of the elements enumerated at 52 Pa Code §5.52 and 52. Pa Code §3.381(c). Applicant's generalized reference to "numerous failures" does not justify the relief requested.

2. While no dispute exists that an application was filed on April 3, 2014, the Preliminary Objections do not reflect Applicant's failure present its application with the certification customarily required of Applicant's at Part 10 of the application form and reading,

10. Certification: Applicant certifies that it is not now engaged in unauthorized intrastate transportation for compensation between points in Pennsylvania and will not engage in said transportation unless and until authorization is received from the Pennsylvania Public Utility Commission. Application for Motor Common Carrier of Persons in Experimental Service (See Application for Motor Common Carrier Service in Experimental Service. *Revised 12/1/2013*)

Applicant instead elects to experiment with a certification of its own liking.

3. The requirements for standing to intervene are not the same as and may be less restrictive than those required to protest an application. The Preliminary Objections are not correct is stating that the requirements of Section 5.52(a) are the same as those set forth at Section 5.72(a)(3). A petitioner is eligible to be granted standing where its participation is in the public's interest. 52 Pa Code §5.72(3). Protestant's petition should be granted because the Public Utility Code and the Commission's policy anticipate that the impact of a new competitor or a new class of competitors upon existing certificated passenger transportation providers will be evaluated.

The Commission is authorized to grant of a certificate of public convenience only if where the agency determines that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. 1103. See also, *Elite Industries, Inc. v. Pa. PUC*, 793 A. 2d 160 (Pa. Cmwlth. 2002). In

this respect, an adequate basis is not suggested by the application that Applicant currently complies or in the future intends to comply with the marketplace it seeks to enter.

Applicant challenges Protestant's standing on the basis of Commission precedent yet anticipates the Commission should waive all precedent, regulations and requirements that may be inconsistent with Applicant's ongoing operations in apparent defiance of the Public Utility Code as well as its proposed operations moving forward ¹. The Commission should deny Applicant's Preliminary Objections as to any issue of standing because, (1) showing good cause, Protestant has in this proceeding specifically requested that the Commission's precedent on the issue of standing be revisited where applications styled as "experimental" are presented and (2) the standards for reviewing the merits of passenger applications are to include, among other factors, a determination of whether the operations of a new entrant would endanger or impair Protestant's operations to an extent that would be contrary to the public interest. 52 Pa Code 41.14(c)

a. The Commission should not overlook the posture of Protestant's case which includes a request for leave to intervene based upon reasons not limited to a suggested injury defined with respect to Allegheny County or to technicalities related to defining call-and-demand services outside of that county. Applicant intends to compete directly for the patrons now using other classes of service and to enter as much of the Pennsylvania marketplace as it can . The self-serving label of "experimental service" and the rhetoric of "ride-sharing" do not justify a finding that existing patrons using transportation services not historically labeled "experimental" are currently and for the future will be the target of Applicant's marketing efforts. As such, current providers

1. See Part IV of page 3 of Attachment A to the application reading, "To the extent that the proposed service is deemed inconsistent with any existing regulations, Applicant requests waiver of such regulations pursuant to the Commission's authority under 66 Pa.C.S. § 501 and 52 Pa. Code § 5.43."

should be afforded the opportunity to challenge the assumptions underlying Applicant's case.

b. Given its approach to entering the western Pennsylvania marketplace, Applicant and its affiliated owner-operators may in fact be operating outside of boundaries of Allegheny County as well as within the county's boundaries. And in its application, Applicant has enumerated a limited number of provisions of the Public Utility Code and regulations it intends to follow, which enumeration does not include any reference corresponding to the territory to be served. Neither Applicant nor its affiliated owner-operators suggest that they have currently subscribed to any geographical limitation, and in fact propose that the public's interest would be served were they free to skip compliance with the provisions of Title 52 not specifically enumerated in the application.

The TNC shall not be required to comply with the provisions of Title 52 of the Pennsylvania Code not specifically addressed herein. Attachment A page 4 Part IV(A)(12)

The proposed operation accordingly would be free from geographical constraints imposed upon other regulated entities. See for example, 52 Pa.Code 312(4)(i) and (5)(i) limiting other passenger transportation providers to the territories described in their certificates.

c. The Commission should understand Applicant's purpose is to compete with existing passenger transportation providers, specifically including Protestant and other call-and-demand operators. Before the Commission in this proceeding are factual issues as to what distinction between "experimental service" and "call and demand" service may be worthy of recognition and which are simply illusory and brought forward with a purpose to evade the burdens, limitations and restrictions adopted by the Commission and observed by existing providers because the public's interest requires. The jargon of Transportation Network Company (TNC) and peer-to-peer ridesharing may be little more than a means of requesting service and confirming dispatch of a vehicle. While Applicant wishes to style its operation as "experimental," there may be no

factual or legal basis to assume the public's interest is to be served by a special type of competitor which is free to ignore service requests from patrons who, for example, may (1) want insurance coverage to apply (2) not have access to the technology required at the time the service is needed, (3) not be traveling to or from a location believed by drivers to be desirable starting or stopping points or (4) not have the benefit of credit or favorable reviews maintained in the Applicant's data base.

d. Protestant incorporates its Answers to Paragraphs 1 through 3(c) in response to the argument offered in this Preliminary Objection.

e. The *YellowX* decision may not provide a sound basis for evaluating Applicant's proposal because it addresses circumstances that are materially different in several respects, most notably the absence of a design to operate without effective insurance coverage for the traveling public. (Reference Docket A-2014-2410269, *Application of Yellow Cab Company of Pittsburgh, Inc.*, Order entered May 22, 2014.) Other reasons that the Commission should deny Preliminary Objections based upon the *YellowX* decision are that (1) the application was unopposed (2) for all intents and purposes, the applicant in that proceeding would control both the "experimental service" operations and those of the dominant, existing provider and (3) the Commission's finding in the cited proceeding that an App-based technology is "...a wider ranging, faster and more user friendly scheduling of transportation services" may not be supported by any particular evidence. (*YellowX* supra, slip opinion at Page 6.) In all events with respect to the cited decision, any impact upon existing providers will remain substantially under the control of the same regulated entity.

f. Protestant incorporates its Answers to Paragraphs 1 through 3(e) in response to the argument offered in this Preliminary Objection.

g. Protestant incorporates its Answers to Paragraphs 1 through 3(e) in response to the argument offered in this Preliminary Objection.

Conclusion

WHEREFORE, for the reasons stated above, Protestant requests that the Preliminary Objections to Protestant's Petition for Leave to Intervene and Protest be denied in all respects and that Protestant be permitted to intervene in this proceeding for the purpose of opposing the Application

Respectfully submitted,

electronically filed
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Certificate of Service

I hereby certify that I have this day served a copy of the foregoing Protest upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

By first-class mail, postage prepaid

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Dated this 6th day of June, 2014

electronically filed

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