

 **Malone Middleman**
A Professional Corporation

Attorneys At Law
Wexford Professional Building III
11676 Perry Highway • Suite 3100
Wexford, Pennsylvania 15090
Tel. 724.934.6888 Fax. 724.934.6866
Writer's E-Mail Address wright@mlmpclaw.com
www.mlmpclaw.com

JAMES F. MALONE, III
RAY F. MIDDLEMAN
PAUL S. GUARNIERI
ANNE M. McARDLE
VICKI HUNT MORTIMER*
DAVID E. SMITH
TODD R. BROWN

ROBERT F. WAGNER
SANFORD A. MIDDLEMAN
MICHAEL J. McSHEA
Of Counsel

*Also Admitted in West Virginia

June 6, 2014

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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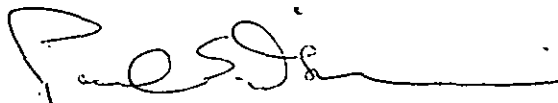
RE: Application of Lyft Inc.
A-2014-2415045

To Whom It May Concern:

Enclosed please find The Pennsylvania Association for Justice's Answer to Preliminary Objections for filing in the above-captioned matter. I am also enclosing an extra copy of this transmittal letter which I would ask that you time-stamp and return in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter and please feel free to contact me with any questions.

Very truly yours,



Paul S. Guarnieri

PSG/tlw
Enclosures

cc: Certificate of Service

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DOCKET NO. A-2014-2415045
DOCKET NO. A-2014-2415047

JUN 06 2014

Application of Lyft, Inc.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ANSWER TO PRELIMINARY OBJECTIONS OF LYFT, INC.

1. The Pennsylvania Association for Justice (PAJ), by and through its attorneys, Ray F. Middleman, Esquire, Paul S. Guarnieri, Esquire and Malone Middleman, P.C., hereby file the within Answer to Preliminary Objections of Lyft, to the Protest of PAJ filed at the above-captioned dockets.

2. Admitted.

3. For the reasons set forth below, PAJ requests that Lyft's preliminary objections be denied.

A. PAJ Has Standing to Protest Lyft's Applications

4. Paragraph 4 of Lyft's preliminary objections and the subparts are denied. The Commission should not dismiss the PAJ Protest pursuant to 52 Pa. Code § 5.101(a)(2) because PAJ has set forth adequate facts establishing standing to protest the application. Contrary to what has been asserted by Lyft, PAJ has a direct, immediate and substantial interest in these proceedings.

Initially, it should be noted that a preliminary objection challenging standing is not cognizable under 52 Pa. Code § 5.101(a). "Lack of standing is not included among the Commission's limited bases for a preliminary objection but rather is now an affirmative defense, and as such is only properly raised in new matter. *Application of Germantown Cab Company,*

Initial Decision, page 5-6 (Docket No. A-2012-229422, August 23, 2012) citing *Jackson v. Garland*, 622 A.2d 969 (Pa. Super. 1993); *Wroblewski v. Pennsylvania Electric Company*, Docket No. C-2008-2058385 (Order entered May 15, 2009); Pa. R.C.P. 1030, 52 Pa. Code § 5.62(b). As such, Lyft's preliminary objection is limited to its contention that the protest lacks sufficient facts to comply with 52 Pa. Code § 5.52(b).¹

PAJ has set forth adequate facts establishing standing to protest Lyft's application. 52 Pa. Code § 5.52(b) requires that the protest conform with 52 Pa. Code § 3.381(c)(1), which requires that:

- (A) A person objecting to the approval of an application shall file with the Secretary and serve upon the applicant and the applicant's attorney, if any, a written protest which shall contain the following:
 - (I) The applicant's name and the docket number of the application.
 - (II) The name, business address and telephone number of the protestant.
 - (III) The name, business address and telephone number of the protestant's attorney or other representative.
 - (IV) A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.
 - (V) 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.
 - (VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest.

With the exception of 52 Pa. Code § 3.381(c)(1)(A)(V), PAJ's written protest contains all of the information required § 3.381(c)(1). (See Protest, ¶¶ 1-5, 23, 28 and 29). PAJ is not a certificated carrier and could not set forth docket numbers as required by Section V.

To have standing to participate before the Commission, a party must have a direct, immediate and substantial interest. The Commonwealth Court has articulated the criteria to determine whether a party has standing as follows:

¹ If Lyft succeeds with this preliminary objection, then PAJ would be entitled to file an Amended Protest pursuant to 52 Pa. Code § 5.101(h).

If a party is not adversely affected in any way by the determination being challenged, the party is not aggrieved and, thereby, has no standing to obtain a judicial resolution of the challenge. "[I]t is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law." In order to be aggrieved, a party must have a substantial interest in the subject matter of the litigation, the interest must be direct, and the interest must be immediate. The substantial interest requirement means that "there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." Direct interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains." Finally, the interest must "be 'immediate' and 'not a remote consequence of the judgment.'".

Energy Conservation Council of Pa. v PUC, 995 A.2d 465, 475 (Pa. Cmwlth. 2009). (Citations omitted).

PAJ has a discernible interest in these proceedings different than "the abstract interest of all citizens in having Lyft comply with the law". 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, which includes Allegheny County. The members of PAJ represent clients to secure full and just compensation for innocent victims, including victims of negligently operated vehicles. PAJ did not file its protest to ensure that Lyft complies with the law. Instead, PAJ seeks to protect its members from Lyft's proposed operations by ensuring that Lyft's fitness is fairly and fully vetted.²

PAJ has a substantial interest as it relates to the ability of its members to effectively represent clients injured by the negligent operations of Lyft drivers. Under Lyft's proposal for insurance, drivers who sign up to drive for Lyft will allegedly be primarily insured by their personal automobile policy of insurance, and Applicant's policy would be "excess coverage". However, coverage for any claim on the driver's policy would undoubtedly be denied because the vehicle is being used to carry a person or property for hire. Applicant's so-called excess liability coverage would not be implicated because there would not be an underlying primary policy of commercial insurance. "...[T]raditional excess insurance coverage generally is subject

² PAJ has not protested Lyft's Application for a lack of need.

to an exhaustion requirement. See 2 EUGENE R. ANDERSON ET AL., INSURANCE COVERAGE LITIGATION §13.4, at 106 (1997) ("Excess coverage attaches only after the primary coverage has been paid out or exhausted."). *Nationwide Ins. Co. v. Schneider*, 960 A.2d 442,449 (Pa. 2007).

In short, under Applicant's proposed plan of insurance, there would be no coverage for injury and damages to persons and property caused by Applicant's drivers. This "gap" insurance coverage constitutes an immediate and ongoing hazard, leaving drivers, passengers, and pedestrians (unknowingly) in the position where they are led to believe that they are covered by insurance when, in fact, they are not. The members of PAJ would not be able to adequately represent injured clients when there is no available insurance from which they could be compensated.

Lyft argues that individuals exposed to the direct harm from the negligent driving of Lyft drivers include Lyft drivers, Lyft passengers or other motorists, and not counsel for the harmed individuals. (Preliminary Objections, Page 3-4).³ PAJ disagrees. As stated previously, PAJ member lawyers are directly affected because those lawyers will not be in a position to adequately protect their injured clients.

PAJ's interests are not speculative. That motor vehicle collisions occur, particularly with commercial operators, is not speculative. Commercial operators, as Lyft drivers would be, occupy the roadways far more than the average operator. As such, the risk of injury from negligent operators is significantly greater. It is not conjecture to state that individuals will be injured by the negligence of Lyft operators if the application is approved. It is inevitable.

Lyft argues that the PAJ protest relates solely to the issue of insurance, and that this concern has been addressed by the Commission in *Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X* (Docket No. A-2014-2410269) (Protest, Page 4). Lyft's statement

³ PAJ would include pedestrians in that category of individuals.

is inaccurate. First, PAJ has also challenged Lyft's fitness to operate citing 52 Pa.Code § 41.14(b)(5). (See Protest, ¶ 7 – "Applicant has been providing common carrier ground transportation service in Allegheny County for the past two (2) months (or longer), and has openly advertised its services via the internet and other sources"). Secondly, in the *Yellow X* case, there was no protest and the Applicant, as an existing carrier, was presumed to be fit. Moreover, if Lyft's argument were accepted, then there would never be grounds to protest, because the Commission has established that it will require entities to comply with its regulations.

Lastly, Lyft contends that PAJ lacks standing because it is not a certificated carrier, citing *Application of Germantown Cab Company* (Docket No. A-2012-229422). PAJ acknowledges that it is not a certificated carrier. However, that PAJ is not a certificated carrier should not preclude it from having standing in this case for two reasons. First, "[a]n association may have standing as a representative of its members." *Energy Conservation Council of Pa. v PUC* Id. at *Energy Conservation Council of Pa. v PUC* at 995 A.2d 465, 476. Secondly, Lyft's Application is for experimental service for which, prior to *Yellow X*, no individual or entity had certificated rights, and by extension – standing. The Commission should appropriately forgive the requirement of being a certificated carrier for the purposes of these proceedings because it is in the public's interest to do so.

B. The PAJ Protest Does Not Contain Impertinent and Scandalous Matter

5. Denied. The protest does not contain "numerous counts of both scandalous and impertinent matter". "To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action." Common Cause/Pennsylvania v. Commonwealth, 710 A.2d 108, 115 (Pa. Commw. Ct. 1998) (striking allegations as immaterial), citing Pennsylvania D.E.R. v. Peggs Run Coal Co., 55 Pa. Commw. 312, 423 A.2d 765 (Pa. Commw. 1980).

Lyft claims that PAJ's reference to "ridesharing is somehow scandalous and impertinent. By its application, Lyft proposes to operate a peer-to-peer "ride-sharing" network using digital software to facilitate transactions between passengers and "ridesharing" operators using their own vehicles to provide transportation. (Application Response to Item #9). Lyft gratuitously offers that it openly and transparently filed its applications with the Commission to ensure that it meets the regulatory requirements of the Commission. However, Lyft fails to state that it has been operating without Commission approval for months. Under what authority is Lyft presently operating if not under the ride-sharing statute? PAJ is entitled to contest the classification as ride-sharing, particularly when Lyft claims the same to be ride-sharing.

Lastly, Lyft complains that PAJ's request for 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, is impertinent because it is premature. As stated by Lyft, Section 333(c) of the Public Utility Code (66 Pa.C.S.A. §333(c)) allows this request at the prehearing conference "or at some other reasonable time prior to the hearing". If the request is premature, which is denied, then the request can be stricken. The request to dismiss the protest is not an appropriate remedy.

WHEREFORE, PAJ respectfully requests that Lyft's preliminary objections be denied.

Respectfully submitted,

Pennsylvania Association for Justice

Date: June 6, 2014

By: 

Ray F. Middleman, Esquire
Paul S. Guarnieri, Esquire
Attorneys for Protestant
MALONE MIDDLEMAN, P.C.
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
(724) 934-6888

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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 Tawxi LLC t/a County Taxi Club
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108
abakare@mwn.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

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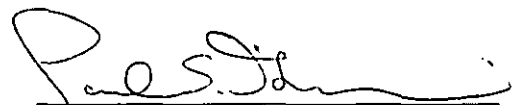
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VIA FIRST-CLASS MAIL

Samuel 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

Judge Mary D. Long
Judge Jeffrey Watson
Administrative Law Judge
Pennsylvania PUC
301 Fifth Ave., Suite 220
Pittsburgh, PA 15222



Paul S. Guarnieri

Dated this 6th day of June, 2014 in Wexford, Pennsylvania

From: (724) 934-6888
 Paul S. Guarnieri
 Malone Middleman P.C.
 11676 Perry Highway, Suite 3100

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 PA Public Utility Commission
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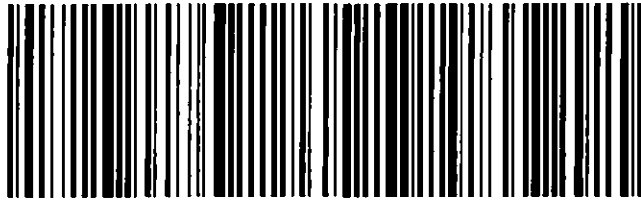
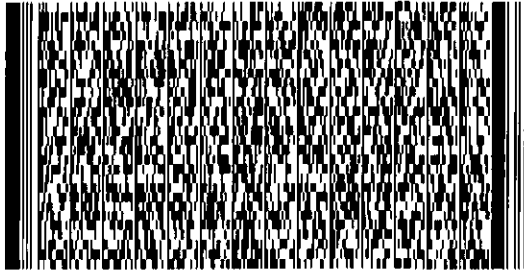
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