BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF **A-2014-2415047**

LYFT, INC.

AMENDED PROTEST OF BM ENTERPRISES, INC., T/A A.G. TAXI

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, B.M. Enterprises, Inc., t/a A.G. Taxi, is a Pennsylvania corporation and a public utility that holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission ("PUC" or "Commission") under docket number A-00121368, authorizing it "to transport, as a common carrier, persons, upon call or demand, in the borough of Bristol and the townships of Bristol and Bensalem, all located in Bucks County" and under docket number A-00121368, F.1, Am-A, "to transport as a common carrier, by motor vehicle, persons, upon call or demand, in the township of Solebury, and the borough of New Hope, and that portion of Buck County located south and east of Pa. Rout 232; and that portion of Montgomery County located north and west of Pa. Route 73." Protestant's address is: 1167 Newport Mews Drive, Bensalem, Pennsylvania. Telephone number: (215) 331-4660.

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.

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:

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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.

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 in 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 will agree to withdraw its protest if the Applicant agrees not to operate in Protestant's authorized territory.

WHEREFORE, Protestant, BM Enterprises, Inc. t/a A.G. Taxi, respectfully requests this Honorable Commission to deny the Application.

Respectfully submitted,

Michael S. Henry

Michael S. Henry
Attorney for Protestant
2336 S. Broad Street
Philadelphia, PA 19145
(215) 218-9800
mshenry@mshenrylaw.com

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:

Lloyd Persun, Esquire
Persun & Heim P.C.
MTR Trans & Billtown Cab
P.O. Box 659
Mechanicsburg, PA 17055-0659
pagelbaugh@persunheim.com

James. P. Dougherty, Esquire
Adeolu A Bakare, Esquire
Barbara A. Darkes, Esquire
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mwn.com

David W. Donely, Esquire
JB Taxi LLC t/a County Taxi Cab
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

Ernest J. Delbo
Shamokin Yellow Cab, Inc.
212 W. Independence Street
Shamokin, PA 17872

Carl Hovenstine
Paul's Cab Service
735 Market Street
Sunbury, PA 17801

Dennis Weldon, Esquire
Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106
dweldon@philapark.org

Paul S. Guarnieri, Esquire
Ray Middleman, Esquire
Malone Middleman, PC
Pennsylvania Ass'n for Justice
Wexford Prof. Building III
11676 Perry Highway, Ste 3100
Wexford, PA 15090
guarnieri@mlmpclaw.com

Honorable Harry A. Readshaw
Pa. House of Representatives
1917 Brownsville Road
Pittsburgh, PA 15210

Samuel R. Marshall
CEO and President
Insurance Federation of PA
1600 Market Street, Ste 1720
Philadelphia, PA 19103
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Michael S. Henry

Michael S. Henry

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Philadelphia, PA 19145
215-218-9800
mshenry@ix.netcom.com

Date: June 6, 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 6, 2014

Amended Date: July 7, 2014

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 7, 2008

Commissioners Present:

James H. Cawley, Vice Chairman
Robert F. Powelson
Tyrone J. Christy
Kim Pizzingrilli
Wayne E. Gardner

Application of BM Enterprises, Inc., t/a A.G. Taxi, a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, inter alia, to transport, by motor vehicle, persons, upon call or demand, in the borough of Bristol and the townships of Bristol and Bensalem, all located in Bucks County; SO AS TO PERMIT the transportation of persons, upon call or demand in the township of Sloebury, and the borough of New Hope, and that portion of Bucks County located south and east of Pa. Route 232; and that portion of Montgomery County located north and west of Pa. Route 73; and the counties of Columbia, Montour, Clinton, Union, Centre and Lycoming.	A-00121368, F. 1, Am-A

BM Enterprises, Inc., t/a A.G. Taxi, applicant, pro se.
Mette, Evans & Woodside, P.C., by Lloyd R. Persun, for protestants:
Billtown Cab Co., Inc., MTR Transportation, Inc., t/d/b/a K Cab Co., Lock Haven Taxi, Inc. and Aurora Taxi, Inc.

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed October 15, 2007. The application was published in the *Pennsylvania Bulletin* of December 8, 2007 with protests due by December 31, 2007. The above-referenced carriers protested the application, and it was referred to the Office of Administrative Law Judge on January 30, 2008. The protests were withdrawn upon the filing of a restrictive amendment and the case was referred back to the Bureau of Transportation and Safety on

April 10, 2008. The now unopposed application is certified to the Commission for its decision without oral hearing.

By letter dated May 23, 2008, applicant was requested to submit verified statements on or before June 23, 2008. The verified statement of applicant and verified statements in support were received on June 23, 2008

DISCUSSION AND FINDINGS

BM Enterprises, Inc., t/a A.G. Taxi (applicant or BM Enterprises) seeks to amend its call or demand service. Applicant received call or demand authority on August 16, 2005. Applicant has no prior history of non-compliance with Commission regulations.

Joseph McQuillan, III is the president of BM Enterprises and Edward Burkhardt is the secretary/treasurer. Mr. McQuillan and Mr. Burkhardt each hold a 50% share in the business. Mr. Burkhardt was duly authorized to complete the verified statement of applicant. He has worked in the call or demand industry since 1989. His experience includes various positions, such as: driver, dispatcher, shift supervisor, general manager and regulatory and legal liaison.

Applicant will conduct operations from an office at 8125 Frankford Avenue, Philadelphia. Dispatching and reservation services have been subcontracted to McQ's Enterprises, Inc., which has offices at the same address. Both corporate officers will handle the administrative responsibilities. All required business records are retained in locked file cabinets at this location. Hours of operation will be 24 hours a day, 7 days a week.

BM Enterprises will employ three drivers and plans to add an additional driver upon approval of this application. All drivers are required to possess a driver's license, which was valid for at least three years prior to hiring, be at least 25 years of age, and not have more than one moving violation (which cannot include DUI or careless/reckless driving). Potential drivers are also subject to pre-employment drug testing and a criminal history background check. A software program is used which will alert applicant to check driver's license status (2-4 times annually) and complete a criminal history check every two years. Applicant has a zero tolerance policy for drug and alcohol use. A driver training program includes a company introduction meeting and at least two full days of training with another driver.

Applicant has three vehicles for use in this service – a 2003 Toyota Camry and two 2003 Ford Windstar vans. Vehicles are inspected and routine maintenance performed by a certified mechanic every 3,000-3,500 miles or every 2 weeks. Drivers also perform pre-trip inspections. To maintain compliance with 52 Pa. Code, Section 29.314(d), vehicles are reviewed in June of each year to allow sufficient time to replace those that do not meet the age requirement. An electronic, automated computer system is utilized to ensure that an annual vehicle list is filed.

The balance sheet of the applicant dated June 1, 2008 shows total assets of $49,787, and total liabilities of $42,150, for owner's equity of $7,637. Projected revenue of $83,236 will return a net income of $1,715, after expenses of $81,521.

Applicant has evidence of bodily injury and property damage liability insurance on file to cover its current operations; however, the Commission requires a new Form E to cover the additional rights granted herein.

The application was protested by three carriers as enumerated supra. The protests were withdrawn by the filing of a restrictive amendment which eliminates service originating in the counties of Columbia, Montour, Clinton, Union, Centre and Lycoming.

A review of the record before us indicates that the applicant possesses the technical expertise, experience, equipment, facilities and sufficient capital and other resources necessary to provide the proposed service.

Applicant has presented verified statements in support from 78 parties, both individuals and businesses located or residing in Montgomery and Bucks counties.

We advise the applicant of the obligation to become familiar with the requirements of 52 Pa. Code as applicable to the operation of a common carrier as authorized by this grant of authority. Failure to comply with all applicable requirements may subject the carrier to penalties, including fines, suspension of operating rights or cancellation of authority. Title 52 of the Pennsylvania Code may be accessed at www.pacode.com. In particular, we urge the applicant to become familiar with the following regulation at 52 Pa. Code §29.505 with respect to requiring a criminal history record for all drivers.

After complete review of the record, we find:

1. Applicant seeks to amend its call or demand authority and the application is unopposed.

2. The application was protested by three carriers and the protests were withdrawn, as discussed supra.

3. Applicant is supported by 78 parties.

4. Applicant has adequate equipment, ability and fitness necessary to render the service, as amended.

5. The evidence of record is sufficient to establish necessity for the service, as amended.

6. Approval of the application, as amended, is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the application is hereby approved granting the following right:

To transport, as a common carrier, by motor vehicle, persons, upon call or demand in the township of Sloebury, and the borough of New Hope, and that portion of Bucks County located south and east of Pa. Route 232; and that portion of Montgomery County located north and west of Pa. Route 73.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation authorized by this order until the applicant has received a certificate of public convenience from the Commission.

IT IS FURTHER ORDERED: That a certificate of public convenience shall not be issued until the following are submitted to the Commission and approved by the Commission:

1. Form E, as evidence of bodily injury and property damage liability insurance.

2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above-determined.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of entry of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 7, 2008

ORDER ENTERED: August 8, 2008