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412.331.8998

July 31, 2014

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

Docket No. A-2014-2415047, Application of Lyft, Inc.

Dear Secretary Chiavetta:

Transmitted herewith is Protestant's Brief in Opposition to the Petition of Lyft, Inc. for Interlocutory Review of the Interim Order and Answer to a Material Question. The Petition was filed in this docket on July 21, 2014.

Very truly yours,

/s/ electronically filed

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2415047  
APPLICATION OF LYFT, INC

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BRIEF OF PROTESTANT JB TAXI LLC'S IN OPPOSITION TO THE  
PETITION OF LYFT, INC. FOR INTERLOCUTORY REVIEW

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Comes now JB Taxi LLC t/a County Taxi Cab (Protestant) and files this Brief in Opposition to the Petitioner's request for interlocutory review of the Interim Order of Administrative Law Judges Mary D. Long and Jeffrey A. Watson dismissing Preliminary Objections to the Protest and Petition for Leave to Intervene. This Brief in Opposition is filed pursuant to 52 Pa. Code § 5.302(a).

Statement of the Case

On April 3, 2014, Petitioner filed an Application for statewide authority to provide passenger transportation services, so-called "experimental services," to all locations in the state and to be described as the operations of a Transportation Network Company. The description of "ride sharing" has also been employed. Protestant filed a Petition for Leave to Intervene and Protest on May 5, 2014, which was the subject of Petitioner's Preliminary Objections. By Interim Order of Administrative Law Judges Mary D. Long and Jeffrey A. Watson, the Preliminary Objections were dismissed.

Since the date the Petition was filed, the Commission has authorized Petitioner to operate under temporary authority in Allegheny County, that authorization consistent with Petitioner's request for Emergency Temporary Authority limited to

Allegheny County Docket No. A-2014-2432304, *Application of Lyft, Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA*, Order entered July 24, 2014.

The Administrative Law Judges have scheduled an evidentiary hearing in this proceeding for August 8 and 9, 2014. That evidentiary hearing is to include both the matters at issue in this case for permanent statewide rights as well as those pending in the companion case limited to permanent rights for Allegheny County. See Hearing Notice dated July 24, 2014, in this proceeding.

#### Protestant's Interests

Protestant challenges Petitioner's proposed service on the grounds that it is not materially different than the type of services Protestant's currently provides in its call and demand operations, that the ensuing competition would be unfair to Protestant and that Petitioner lacks the fitness required under the Public Utility Code. Protestant believes that each of these concerns appears well founded given Petitioner's efforts to compete directly with existing providers of call and demand service by unauthorized passenger brokerage operations.

#### Argument

1. Interlocutory review will not meaningfully expedite this proceeding.

Petitioner's purpose in seeking interlocutory review is to expedite the Commission's handling of the application for permanent authority. (Paragraph 4 of the petition.) No other purpose is suggested. The evidentiary hearing has been set for August 8<sup>th</sup> and 9<sup>th</sup>. Were relief granted to entertain the material question suggested in

the petition, the answer would not likely reduce the number of parties at the hearing nor allow for the evidentiary hearing to occur at an earlier time.

2. No compelling reason for interlocutory review has been established by Petitioner.

Since the time Petitioner's request for relief was presented, the Commission has already addressed a meaningful portion of the harm implicit in further delay on Petitioner's suggestion that the proposed service is consistent with and required by the public's interest. Petitioner has not requested emergency temporary authority to provide statewide service even though it has at all times remained free to do so.

3. The Commission has already declined similar requests for relief in similar proceedings.

The Commission has reviewed recently reviewed similar petitions advanced on substantially the same grounds and for the same purposes. The same conclusion is warranted in this proceeding. Docket P-2014-2431743, *Application of Rasier-PA LLC, a limited liability company of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Allegheny County*, Order entered July 24, 2014.

4. Petitioner's case should be rejected on the merits.

There may be no clear precedent on the question of standing to challenge a new class of service, particularly where there is no clear or common understanding as to what considerations and rules are to accompany such services. With respect to the service proposed, The Commission has recently concluded,

[ I]t is not entirely clear where, and if, the service fits within Commission's current regulatory construct. Absent a final Commission adjudication, there is uncertainty as to whether the business model of any TNC, including Lyft, falls squarely within the definition of "broker" under Section 2501 or "common carrier" under Section 102, or neither.

The fact that at least one bill has been proposed in the Pennsylvania Senate to create a new section of the Public Utility Code to regulate these new app-based transportation models suggests, at a minimum, that their place within our current regulations is unclear. Docket No. A-2014-2432304, *Application of Lyft, Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA*. Order entered July 24, 2014, slip opinion at page 20.

Experimental service as proposed by Petitioner raises at least two important issues with respect to the marketplace, regulatory requirements, and the competitive environment for the territory Petitioner serves. They are: (1) does experimental service include an obligation to serve any and all potential patrons, and (2) does experimental service permit the Applicant or its drivers to serve a defined and limited group of patrons? These questions are not abstract but bear directly upon the marketplace Petitioner has chosen. The public's interest might better be determined on an evidentiary record developed after providing existing call and demand with an opportunity to participate. The Commission has viewed the question of standing as turning on either actual or potential conflict. Application of Glen Alsace Water Company, 45 PA PUC 472 (1971.) And any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Boyd v. Ward, 802 A.2d 705 (Pa.Cmwlth. 2002)

Petitioner proposes a service obligation exempt from any service requirements other than those drivers might choose to accept while using the digital platform. While the Commission has invited and encouraged technology, such as the software advanced to support Petitioner's operations within Allegheny County and that proposed in other recent proceedings, the Commission has not and should not find that technology standing alone confers any right, privilege or immunity under the

Public Utility Code. To accept Petitioner's premise, that is, the technology once tagged by an applicant as "experimental," necessarily justifies the exclusion of all other traditional providers from challenging a proposal, even though they intend to serve or are serving the same patrons. Were the Commission to accept that contention, the Commission's role is now suggested to be a ministerial chore even though it would directly and immediately affect the existing providers excluded from participation.

The link between Protestant's concerns over unfair competition and passenger broker operations mislabeled as "experimental" are both direct and clearly substantiated by the decisions of Petitioner's management since the Protest was filed. The Protest demonstrates that existing providers of call-and-demand services should be afforded standing if the Commission is to have a record upon which the current policy, as set forth at 52 Pa.Code 41.14, to consider the impact of a Transportation Network Company or a ride-sharing operation upon existing providers.

### Conclusion

The Petition should be denied and the applications for permanent authority returned to the Administrative Law Judges assigned to this case.

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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Buchanan Ingersoll & Rooney PC  
409 North Second Street, Suite 500  
Harrisburg PA 17101-1357

Michael S. Henry, Esquire  
Michael S. Henry LLC  
2336 South Broad Street  
Philadelphia PA 19145

Dated this 31st day of July, 2014

By email

Admin. Law Judge Mary D. Long  
Pennsylvania Public Utility Commission  
Piatt Place – Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Admin. Law Judge Jeffrey A. Watson  
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