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July 31, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

Re: Application of Lyft, Inc. (Experimental Service in Allegheny County); A-2014-2415045

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Brief of Lyft, Inc. in Support of Petition for Interlocutory Review and Answer to a Material Question in Response to Protest of JB Taxi LLC t/a County Taxi Cab in the above-captioned proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to Lyft, Inc.

/lmc
Enclosure

c: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Administrative Law Judge Jeffrey A. Watson (via e-mail and First-Class Mail)
Certificate of Service

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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

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Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 31st day of July, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Lyft, Inc.

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Docket No. A-2014-2415045

**BRIEF OF LYFT, INC. IN SUPPORT OF PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO A MATERIAL QUESTION IN RESPONSE TO PROTEST OF JB
TAXI LLC T/A COUNTY TAXI CAB**

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Dated: July 31, 2014

I. INTRODUCTION

On July 21, 2014, Lyft, Inc. ("Lyft") filed a Petition for Interlocutory Review ("Petition"), presenting the following question for consideration by the Commission:

Does a taxicab carrier lacking certificated authority of any kind in the service territory in which an applicant proposes to offer service have standing to protest the application?

As set forth in the Petition, the proposed answer is no. Under the unique circumstances presented here, where a taxicab company was granted standing to protest an application to offer experimental transportation service despite lacking existing or planned authority *of any kind* in the subject service territory, interlocutory review should be granted to prevent irreparable harm and eliminate substantial prejudice. By granting interlocutory review and finding that JB Taxi LLC t/a County Taxi Cab ("JB Taxi") lacks standing to protest the Application to offer experimental service filed by Lyft in April 3, 2014 in the above-captioned docket ("Allegheny County Application" or "Application")¹, the Commission will allow the Allegheny County Application to move forward in an efficient manner, without subjecting Lyft to irreparable harm resulting from unwarranted opposition to the Application. Granting Lyft's Petition would also alleviate the substantial prejudice created by the denial of Preliminary Objections filed by Lyft, Inc. against JB Taxi, despite the granting of substantially identical Preliminary Objections filed against JB Taxi in a parallel proceeding.

On April 3, 2014, Lyft filed the above-referenced Application, requesting Commission authority to offer experimental transportation network service in Allegheny County, pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, JB

¹ Also on April 3, 2014, Lyft filed an Application to offer experimental service through the Commonwealth, at Docket No. A-2014-2145047.

Taxi filed a Petition for Leave to Intervene and Protest ("Protest").² In its Protest, JB Taxi confirmed that the company is currently certificated to offer service in Beaver, Lawrence, Mercer, and Crawford Counties, *but holds no authority to offer service in Allegheny County*. Protest, ¶ 4

Lyft filed timely Preliminary Objections to the Protest on May 27, 2014 ("Preliminary Objections"). The Preliminary Objections established that JB Taxi does not possess any certificated authority to operate in Allegheny County and requested that the ALJs dismiss the Protest for lack of standing.

On June 25, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson issued an Interim Order denying Lyft's Preliminary Objections alleging only that the transportation network service offered by Lyft could be in actual or potential conflict with the taxicab service offered by JB Taxi, but *failed to address how any actual or potential conflict could exist when JB Taxi does not hold any authority to operate in Allegheny County*.

II. SUMMARY OF ARGUMENT

Allowing JB Taxi to protest the Allegheny County Application without demonstrating any authority to operate in Allegheny County would eviscerate the Commission's long-standing precedents establishing that a protestant must demonstrate operating authority that is in actual or potential conflict with the authority sought by the applicant.

Additionally, because JB Taxi has no existing or planned operating authority to operate in Allegheny County, subjecting the Application to JB Taxi's Protest would require Lyft, the ALJs, and the Commission to inefficiently allocate resources to address JB Taxi's positions in this proceeding. Diverting resources to address clearly irrelevant claims runs contrary to principles of judicial economy. *See* 52 Pa. Code § 1.2. Further, such a result in this case would substantially

² The Interim Order denied the Petition to Intervene filed by JB Taxi as duplicative to the Protest. Interim Order, p. 7.

prejudice Lyft by subjecting the company to a Protest that would not generally be permitted under the Commission's Regulations and precedents. For example, in a parallel experimental service application proceeding, JB Taxi filed an identical protest and the presiding ALJs dismissed JB Taxi's Preliminary Objections based on the same arguments that were inexplicably rejected in this proceeding. For these reasons, the Commission should grant interlocutory review, answer the Material Question, and dismiss the Protest filed by JB Taxi.

III. ARGUMENT

The Commission's Regulations require that protests to any application "set forth facts establishing the protestant's standing to protest." *See* 52 Pa. Code § 5.52(a)(3). To establish standing, a protestant must furnish evidence of an interest directly affected by the proceeding or otherwise in the public interest. *Application of Consumers Pennsylvania Water Company - Shenango Valley Division*, Opinion and Order, Docket No. A-212750F0007 (January 11, 2001), p. 9 (hereinafter "*Consumers*") (Emphasis added); *see* 52 Pa. Code § 5.52(b); *see also* 52 Pa. Code § 5.72. A general interest in compliance with the law is insufficient to confer standing to protest an application. *In re PECO Energy Co.*, slip op., Docket No. A110550F0160 (July 18, 2005) p. 8 (hereinafter "*PECO*").

With regard to transportation proceedings, the Commission has specifically found that carriers engaged in a specific type of common carriage lack standing to protest or intervene in proceedings where an applicant proposes to offer another variant of common carriage, distinct from that offered by the protestant. *See Re Capitol Bus Company*, 53, PA P.U.C. 590 (1979); *see*

also *Application of K&F Medical Transport, LLC*, Initial Decision, Docket No. A-2008-2020353 (April 25, 2008) (hereinafter, "*K&F Medical Transport*").³

Contrary to the Commission's prior Orders warning protestants that standing to protest will not be granted absent some demonstrated authority in actual or potential conflict with the authority sought by the applicant, JB Taxi proceeded to file a Protest to the Allegheny County Application with full knowledge that it lacked authority of any kind in the service territory. To preserve the force of its prior Orders, the Commission should answer the Material Question and confirm that all protestants must comply with the established standing requirements.

Answering the Material Question as proposed by Lyft will allow Lyft and the remaining parties to the Allegheny County Application proceeding to move forward more efficiently and prevent irreparable harm that would result from subjecting Lyft's Application to an improper protest.⁴ For example, the presiding ALJs have scheduled hearings in the Application Docket for August 7-8, 2014. Notably, these hearings will address the Statewide Application as well. As the Commission's next scheduled Public Meeting will be held on August 21, 2014, the Commission will not convene before the scheduled hearing date.⁵ However, this result would not prejudice Applicant because Applicant has also intervened in the Statewide Application docket and would attend the hearings in Pittsburgh regardless of the disposition of Lyft's Petition. Although the Commission may not be able to render a decision prior to August 21, parties are also required to file Initial and Reply Briefs on August 22 and August 29, respectively. Therefore, if the Commission answered the Material Question at the August 21 Public Meeting, the decision could

³ The Initial Decision issued at Docket No. A-2008-2020353 was made final by operation of law on July 8, 2008. *See Application of K&F Medical Transport, LLC*, Secretarial Letter, Docket No. A-2008-2020353 (July 8, 2008).

⁴ Other than JB Taxi, the sole protestant to the Allegheny County Application is Executive Transportation Inc., t/a Luxury Sedan ("Executive Transportation").

⁵ Lyft would not object to an earlier or preliminary resolution of this Matter through a Secretarial Letter, if deemed appropriate by the Commission.

prohibit JB Taxi from filing a Main Brief and irreparably harming Lyft by compelling the company to review and respond to arguments that should not be permitted on the record. Additionally, dismissing JB Taxi's Protest would reduce the number of briefs filed in this docket, thereby significantly alleviating the burden placed on the ALJs tasked with issuance of a Recommended Decision in the Allegheny County Application proceeding.⁶

Further, answering the Material Question as proposed by Lyft would eliminate substantial prejudice. Contemporaneously with the Interim Order denying Lyft's Preliminary Objections to JB Taxi's Protest, the ALJs addressed the same question in a similar proceeding at Docket No. A-2014-2429993, and granted Preliminary Objections filed by Raiser-PA LLC, in conjunction with Uber Technologies, Inc ("Uber"). Uber similarly filed an Application requesting authority to offer experimental service in Allegheny County. JB Taxi filed a Petition to Intervene and Protest in substantially the same form as the Petition and Protest at issue in this proceeding. Like Lyft, Uber filed Preliminary Objections attesting that JB Taxi did not hold operating authority in Allegheny County and therefore requested dismissal of the JB Taxi Petition and Protest for lack of standing. However, despite addressing identical facts and legal claims, the ALJs granted Uber's Preliminary Objections and dismissed the JB Taxi Petition and Protest in the Uber docket while denying the corresponding Preliminary Objections in the Lyft docket. *See* Initial Decision dismissing Protest of JB Taxi LLC at Docket No. A-2014-2416127 (July 1, 2014).

If JB Taxi is permitted to protest Lyft's Allegheny County Application, Lyft would be substantially prejudiced, notwithstanding the Commission's prior approval of Lyft's Application

⁶ To the extent that the Commission questions whether dismissing JB Taxi's Protest would cure an irreparable harm or prejudice in light of the parallel Statewide Application, Lyft submits that the issues in the two proceedings are not analogous. For example, a party to the Allegheny County proceeding could raise issues specific to transportation considerations in Allegheny County that would be irrelevant to the Statewide Application and vice versa. Moreover, the Prehearing Order issued by the ALJs requires submission of separate briefs for any party participating in both proceedings, further supporting interlocutory review to mitigate irreparable harm and prejudice to Lyft resulting from the burden of responding to an unwarranted and unsupported Protest.

for Emergency Temporary Authority ("ETA"). *See Application of Lyft, Inc., Order*, Docket No. A-2014-2432304 (July 24, 2014) ("ETA Order"). As stated in the ETA Order, the findings in that docket have no bearing on the matters at issue in this proceeding. *See* ETA Order, Ordering Paragraph No. 5, p. 23. Therefore, any claim or issue that JB Taxi raises in the Allegheny County Application docket, that is not raised by another party or Commission Staff, prejudices and irreparably harms Lyft by forcing the company to invest additional time and litigation resources to address claims from an entity with no legitimate interest in this proceeding. Further, if Lyft reached a resolution of contested matters with Executive Transportation, JB Taxi would retain status to challenge the settlement as the only remaining protestant. This plausible scenario would constitute an absurd result as JB Taxi would be the sole party objecting to Lyft's Allegheny County Application, despite failing to demonstrate the slightest indicia of present or planned authority to operate in Allegheny County.

WHEREFORE, for all the foregoing reasons, the Commission should grant interlocutory review, answer the Material Question, reverse the Interim Order, dismiss the JB Taxi Protest, and take any other action deemed necessary to resolve the above-captioned proceeding.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

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