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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 Pennsylvania); A-2014-2415047

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 Various Protestants 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 
Adeolu A. Bakare

Counsel to Lyft, Inc.

Imc
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).

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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-2014-2415047

**BRIEF OF LYFT, INC. IN SUPPORT OF PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO A MATERIAL QUESTION IN RESPONSE TO VARIOUS
PROTESTANTS**

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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 Pennsylvania Public Utility Commission ("PUC" or "Commission"):

In light of prior Commission Orders concluding that motor carriers offering a specific transportation service do not have standing to protest applications for other transportation services, do carriers authorized to offer limousine, call or demand, or other transportation services have standing to protest an application to offer transportation network service where the Commission has already distinguished transportation network service from existing motor carrier services?

As set forth in the Petition, the proposed answer is no. Interlocutory review should be granted by the Commission in light of the circumstances presented here, where call or demand, limousine, and paratransit carriers were granted standing to protest an application to offer experimental transportation service despite clear differences between such services and the proposed experimental transportation network service. By granting interlocutory review and finding that call or demand, limousine, and paratransit carriers lack standing to protest the Application filed by Lyft on April 3, 2014 in the above-captioned docket ("Statewide Application")¹, the Commission will allow the Statewide Application to move forward in an efficient manner, without subjecting Lyft to irreparable harm resulting from unwarranted

¹ Also on April 3, 2014, Lyft filed an Application to offer experimental service through in Allegheny County, at Docket No. A-2014-2145045.

opposition to the Statewide Application by various protestants.² Granting Lyft's Petition would also alleviate the substantial prejudice created by divergence from the Commission's long-standing precedents establishing that protestants to motor carrier applications must demonstrate an actual or potential conflict with the specific service proposed by an applicant.

On April 3, 2014, Lyft filed the above-referenced Statewide Application, requesting Commission authority to offer experimental transportation network service across the Commonwealth, pursuant to Section 29.352 of the Commission's Regulations. 52 Pa. Code § 29.352. On May 5, 2014, each of the Protestants filed a Protest to the Statewide Application.³ The Protests confirmed that each individual Protestant offered either call or demand service, limousine service, paratransit service, or some combination of these services.

Lyft filed timely Preliminary Objections to the Protests on May 27, 2014, except that a Motion for Partial Judgment on the Pleadings was alternatively filed against Protestant MTR on May 28, 2014 (collectively "Preliminary Objections"). The Preliminary Objections alleged that Protestants lacked standing to protest the Statewide Application because the call or demand, limousine, and paratransit transportation services offered by Protestants are distinct from the transportation network service offered by Lyft and therefore fail to evidence an actual or potential conflict with the proposed service.

² Protests relevant to this Petition were filed by JB Taxi LLC ("JB Taxi"), Billtown Cab Co., Inc. ("Billtown"), MTR Transportation Co., Inc., t/d/b/a K-Cab Co ("MTR"), Paul's Cab Co. ("Paul's Cab"), Aceone Trans Co., AF Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BM Enterprises, Inc., t/a A.G. Taxi, BNA Cab Co., BNG Cab Co., BNJ Cab Co., Inc., Bond Taxi, Inc., BPS Trans, Inc., Double A Cab. Co., Executive Transportation, Inc., t/a Luxury Sedan, FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., Germantown Cab Company, GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., LAN Trans Co., Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Trans, Inc., MG Trans Co., Inc., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., S&S Taxi Cab, Inc., SABA Trans, Inc., SAJ Trans, Inc., Sawink, Inc., t/a County Cab, SF Taxi, Inc., Shawn Cab, Inc., t/a Delaware County Cab, Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., Valtrans, Inc., VB Trans, Inc., VSM Trans, Inc., AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dee Dee Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc. ("Taxicab Carriers") (collectively "Protestants").

³ The Interim Order denied the Petition to Intervene filed by JB Taxi as duplicative to the Protest. Interim Order, p. 7.

Between June 24, 2014 and June 26, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson issued Interim Orders denying Lyft's Preliminary Objections as to standing. Specifically, the ALJs issued the following Interim Orders: (1) Interim Order dismissing Preliminary Objections to the JB Taxi LLC Protest on June 24, 2014 ("JB Taxi Interim Order"); (2) Interim Order dismissing Preliminary Objections to the Billtown Cab. Co. Protest on June 24, 2014 ("Billtown Interim Order"); Interim Order dismissing Preliminary Objections to the MTR Protest on June 26, 2014 ("MTR Interim Order")⁴; (4) and an Interim Order dismissing the Protests filed by various Taxicab Carriers (as defined above) on June 26, 2014 ("Taxicab Carriers Interim Order").⁵ Each Interim Order dismissed Lyft's Preliminary Objections on the grounds that Protestants hold authority to provide transportation services similar to that which may be provided by Applicant. JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. In finding that the call or demand, limousine, or paratransit authority held by Protestants is in actual or potential conflict with the experimental transportation service proposed by Lyft, the ALJs applied an overbroad interpretation of the standard. Interlocutory review is necessary to prevent irreparable harm and substantial prejudice to Lyft that would otherwise result from the Interim Orders.

II. SUMMARY OF ARGUMENT

Allowing Protestants to protest the Statewide Application without demonstrating any authority in actual or potential conflict with the experimental service proposed by Lyft would eviscerate the Commission's long-standing precedents establishing that a protestant must

⁴ The Motion for Partial Summary Judgment filed against MTR raised the same standing issues as the Preliminary Objections filed against the remaining Protestants and is therefore referenced a Preliminary Objection for purposes of this Brief.

⁵ An Interim Order issued on June 24, 2014, with regard to Paul's Cab, denied Lyft's Preliminary Objection with regard to standing, but granted Preliminary Objections raising procedural defects with the protest and directed Paul's Cab to both file an amended protest and secure counsel within 10 days. As Paul's Cab failed to file an amended protest or secure counsel, the protest is deemed dismissed.

demonstrate operating authority that is in actual or potential conflict with the authority sought by the applicant.

Contrary to the ALJs' findings, the Statewide Application distinguished the service offered by Lyft from call or demand, limousine, or paratransit service in numerous ways, including the manner of hail and type of vehicle.

Additionally, because Protestants have no authority in actual or potential conflict with the service proposed by Lyft, subjecting the Application to opposition from the Protestants would require Lyft, the ALJs, and the Commission to inefficiently allocate resources to address the Protestants' positions. 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 prejudice Lyft by subjecting the company to Protests that would not generally be permitted under the Commission's Regulations and precedents, despite the Commission's past practice of routinely holding that carriers falling under one category of motor carrier service do not have standing to protest applications for a different transportation service. For these reasons, the Commission should grant interlocutory review, answer the Material Question, and dismiss each of the Protests filed by the previously identified Protestants.

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) (finding that call or demand authority conferred no standing to protest scheduled route service application); *see also Application of K&F Medical Transport, LLC*, Initial Decision, Docket No. A-2008-2020353 (April 25, 2008), p. 8 (hereinafter, "*K&F Medical Transport*").⁶

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, each of the Protestants proceeded to file a Protest to Lyft's Statewide Application, despite material differences between the experimental service proposed by Lyft and the call or demand, limousine, paratransit or airport transfer service offered by Protestants.

The Interim Order relied on statements made in the Statewide Application and determined that the experimental service proposed by Applicant is similar to the call or demand, limousine, or paratransit services offered by Protestants. JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. This was in error. The Preliminary Objections referenced the unique nature of Lyft's proposed experimental service, specifically referencing the Commission's recent approval of an application for TNC service filed

⁶ 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).

by Yellow Cab Company of Pittsburgh, Inc. ("Yellow Cab"), where the Commission made the following finding:

The proposed experimental service can be seen as an extension of existing motor carrier passenger transportation services, **namely limousine and call or demand**. However, we believe that sufficient differences exist to distinguish these existing motor carrier passenger transportation services from the proposed experimental service; **the main distinguishing feature here is that Yellow Cab proposes to use an App-based technology to arrange the motor carrier passenger transportation service so as to allow for a wider ranging, faster and more user friendly scheduling of transportation service.**

Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X, Order, Docket No. A-2014-2410269 (May 22, 2014), p. 6 (emphasis added) (hereinafter "Yellow Cab Order"). Like Yellow X, Lyft uses app-based technology to efficiently and conveniently connect potential passengers with non-professional drivers. Statewide Application, Attachment A, p. 1. On such grounds alone, Lyft's proposed service is distinct from traditional transportation services.

The Interim Order further asserted that the Statewide Application failed to establish a particular restriction on the proposed experimental transportation service that would differentiate it from the call or demand, limousine, or paratransit service offered by Executive Transportation. JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. However, the ALJs failed to mention that the services offered by Protestants are defined with specificity in the Commission's Regulations in a manner that distinguishes each from the experimental transportation network service proposed by Lyft.

With regard to call or demand service, passengers using the service secure transportation by "telephone call or by hail, or both." 52 Pa. Code § 29.13. The Statewide Application establishes a clear division between call or demand service and Lyft's proposed service by confirming that rides can be booked only through use of the proprietary mobile application

software (as opposed to by telephone call) and further clarifying that drivers using Lyft's platform cannot accept street hails. Statewide Application, Attachment A, p. 3. A similar distinction exists between the proposed service and limousine service, which is that it must be provided using *exclusively* luxury vehicles. *See* 52 Pa. Code § 29.13. To the contrary, passengers using Lyft's experimental transportation network service seek peer-to-peer transportation, using the drivers' personal vehicle. Statewide Application, Attachment A, p. 1. Therefore, Lyft caters to an entirely different customer sector, as any passenger seeking luxury transportation would not be able to rely on Lyft to obtain the desired service.

Lyft's service also differs from paratransit and airport transfer service. Under the Commission's Regulations, both paratransit and airport transfer service must be rendered on a nonexclusive basis. 52 Pa. Code § 29.13 (defining airport transfer service as nonexclusive service); *see also* 52 Pa. Code § 29.353 (defining paratransit service as nonexclusive service). The ALJs observe that the Statewide Application does not state that vans or minivans would transport one person at a time in incorrect. *See* JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. The following excerpts show that the Statewide Application clarified that the service is offered to individuals rather than nonexclusive groups:

- 3) The TNC shall maintain electronic records for each trip completed through the platform, including the identity of the passenger and driver, a description of the vehicle, the amount paid or donated, if any, the time and location of origination and completion, and a GPS record of the precise route taken.
- 4) Following transmission and acceptance of the ride request, the TNC application will provide the passenger with an "in-app" confirmation of acceptance, a picture of the driver and vehicle, and a link allowing the passenger to communicate to the driver any special requests or instructions.
- 5) Upon completion of a trip, the TNC shall transmit an electronic receipt to the passenger's email address or mobile application documenting the

origination and destination of the trip and a description of the total amount paid or donated, if any.

Statewide Application, Attachment A, p. 3. The language in the Application established that the proposed service will be provided on an exclusive basis, as further confirmed in the Preliminary Objections. *See* Preliminary Objections to Billtown Protest, p. 4, Preliminary Objections to MTR Protest, p. 4.

Finally, the ALJs' finding that Lyft applied a "narrow view of standing" is also in error. JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. Lyft simply applied the standard that the Commission had applied in prior cases. *K&F Medical Transport*, p. 8. Additionally, in arguing that Lyft's interpretation of the standard would bar almost any protestant, the ALJs overlooked that Lyft is hardly the only entity proposing to offer TNC service in the Commonwealth. Any one of the various entities that have submitted Applications to offer TNC service could have intervened in this proceeding.⁷ As for Protestants, the Interim Order unreasonably conferred standing where the service proposed by Lyft poses no actual or potential conflict. The ALJs appear to interpret the Commission's standing standard to mean that standing shall follow if, in any instance, applicant's service could be applied to meet a transportation need that could also be met by the protestant. *See* JB Taxi Interim Order, p. 5, Billtown Interim Order, p. 5, MTR Interim Order, p. 5, Taxicab Carriers Interim Order, p. 7. This interpretation is unreasonably broad in light of Commission precedent denying standing to protest where a call or demand provider protested an application for service submitted by a potential provider of paratransit service. *See* Preliminary Objections, pp. 4-5 *citing K&F Medical*

⁷ To the knowledge of Lyft, at least four additional entities were actively requesting authority to offer experimental TNC service during the protest period established for the Allegheny County Application. None of these four entities, Yellow X, Raiser PA LLC, Cranberry Taxi, or CheckerX protested the Allegheny County Application, but of the four, three would have had a legitimate claim of standing to protest the Application (CheckerX did not propose to serve Allegheny County).

Transport, p. 8. Of course, there may be instances where a call or demand taxicab could substitute for a paratransit service provider, but on the whole, the services provided are sufficiently distinct to preclude a call or demand provider from protesting an application to offer paratransit service. The same result should follow here as Lyft's proposed experimental service generally satisfied a different public need than the call or demand, limousine, paratransit, or airport transfer services offered by Protestants.

The finding in the Interim Order cannot be reconciled with the Commission's precedents on the matter of standing to protest applications for transportation service. 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 any remaining parties to the Statewide Application proceeding to move forward more efficiently and prevent irreparable harm that would result from subjecting the Statewide Application to an improper protest.⁸ For example, the presiding ALJs have scheduled hearings in the Statewide Application Docket for August 7-8, 2014. Notably, these hearings will address the Allegheny County 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.⁹ 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 prohibit Protestants from filing Main Briefs and irreparably harming Lyft by compelling the

⁸ Other than Executive Transportation, the sole protestant to the Allegheny County Application is JB Taxi LLC ("JB Taxi").

⁹ Lyft would not object to an earlier or preliminary resolution of this Matter through a Secretarial Letter, if deemed appropriate by the Commission.

company to review and respond to arguments that should not be permitted on the record. Additionally, dismissing Protestants' Protests 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 Statewide Application proceeding.¹⁰

Further, answering the Material Question as proposed by Lyft would eliminate substantial prejudice. As discussed above, the Commission has long established that applicants proposing to offer transportation services in the Commonwealth should not be subjected to generalized Protests from any other common carrier. To the contrary, the Commission has steadfastly limited lawful Protests to those filed by service providers offering substantially the same service as the applicant. *K&F Medical Transport*, p. 8. Deviating from the consistent line of case precedents would prejudice Lyft by subjecting its Statewide Application to Protests beyond those reasonably anticipated to be permitted based on the Commission's prior application of its Regulations.

If Protestants are permitted to protest Lyft's Statewide Application, Lyft would be substantially prejudiced, notwithstanding the Commission's prior approval of Lyft's Application 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 application proceedings at issue in this proceeding. *See* ETA Order, Ordering Paragraph No. 5, p. 23. Therefore, any claim or issue that any of the Protestants raise in the Statewide 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

¹⁰ To the extent that the Commission questions whether dismissing Protestants' Protests 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 numerous unwarranted Protests.

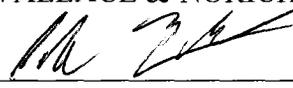
litigation resources to address claims from entities that have no legitimate interests in this proceeding.

WHEREFORE, for all the foregoing reasons, the Commission should answer the Material Question, reverse the Interim Order, dismiss the Protests filed by JB Taxi LLC, Billtown Cab Co., Inc., MTR Transportation Co., Inc., t/d/b/a K-Cab Co, Aceone Trans Co., AF Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BM Enterprises, Inc., t/a A.G. Taxi, BNA Cab Co., BNG Cab Co., BNJ Cab Co., Inc., Bond Taxi, Inc., BPS Trans, Inc., Double A Cab. Co., Executive Transportation, Inc., t/a Luxury Sedan, FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., Germantown Cab Company, GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., LAN Trans Co., Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Trans, Inc., MG Trans Co., Inc., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., S&S Taxi Cab, Inc., SABA Trans, Inc., SAJ Trans, Inc., Sawink, Inc., t/a County Cab, SF Taxi, Inc., Shawn Cab, Inc., t/a Delaware County Cab, Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., Valtrans, Inc., VB Trans, Inc., VSM Trans, Inc, AG Cab, Inc., Ronald Cab, Inc., t/a Community Cab, Bucks County Services, Inc., Dee Dee Cab Company, Jaydan, Inc., and Rosemont Taxicab Co., Inc., and take any other action deemed necessary to resolve the above-captioned proceeding.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: July 31, 2014