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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 Executive Transportation Inc., t/a Luxury Sedan 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.

/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).

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.

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 limousine service do not have standing to protest applications for call or demand taxicab service, do carriers authorized to offer limousine service have standing to protest an application to offer transportation network service where the Commission has already distinguished transportation network service from motor carrier service?

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 a limousine company was granted standing to protest an application to offer experimental transportation service despite clear differences between limousine service and the proposed experimental transportation network service, interlocutory review should be granted by the Commission. By granting interlocutory review and finding that Executive Transportation Inc., t/a Luxury Sedan ("Executive Transportation") 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")¹, the Commission will allow the 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 divergence from the Commission's longstanding precedents establishing that protestants to motor carrier applications must demonstrate an actual or potential conflict with the specific service proposed by an applicant.

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

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, Executive Transportation filed a Protest ("Protest").² In its Protest, Executive Transportation confirmed that the company is currently certificated "to transport, as a common carrier, persons, in limousine service, between points in Pennsylvania." Protest, p. 2.

Lyft filed timely Preliminary Objections to the Protest on May 27, 2014 ("Preliminary Objections"). The Preliminary Objections alleged that Executive Transportation lacks standing to Protest the Allegheny County Application and further alleged that the Protest was defective as to form.

On June 25, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson issued an Interim Order denying Lyft's Preliminary Objections as to standing, finding that Executive Transportation holds authority which provides transportation services similar to that which may be provided by Applicant "*under the auspices of traditional call or demand, paratransit or airport transfer authority.*"³ Interim Order, p. 5. Importantly, the ALJs did not address how limousine service, the only service that Executive Transportation holds authority to offer in Allegheny County, is in actual or potential conflict with the experimental transportation service proposed by Lyft.⁴

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

³ The ALJs granted the Preliminary Objections as to form and directed Executive Transportation to file an Amended Protest within 10 days. Executive Transportation filed the Amended Protest on July 7, 2014.

⁴ As described in detail below, the ALJs apparently relied on admittedly contradictory statements in Executive Transportation's Protest. In Paragraph I.2, Executive Transportation stated that it holds PUC authority to offer solely limousine service. Protest, p. 2. However, in Paragraph III.6, Executive Transportation states that it holds call or demand authority in Philadelphia. Protest, p. 3; *see also* Preliminary Objections, p. 3. In any case, Executive Transportation's authority in Allegheny County is limited to limousine service. *See* Amended Protest, p. 2 *citing* PUC Certificate of Public Commission issued at Docket A-00109726.

II. SUMMARY OF ARGUMENT

Allowing Executive Transportation to protest the Allegheny County 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 demonstrate operating authority that is in actual or potential conflict with the authority sought by the applicant.

Contrary to the ALJs' findings, the Allegheny County Application distinguished the service offered by Lyft from limousine service in numerous ways, including the requirement that limousine service providers use exclusively luxury vehicles.

Additionally, because Executive Transportation has no authority in actual or potential conflict with the service proposed by Lyft, subjecting the Allegheny County Application to Executive Transportation's Protest would require Lyft, the ALJs, and the Commission to inefficiently allocate resources to address Executive Transportation'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 prejudice Lyft by subjecting the company to a Protest that would not generally be permitted under the Commission's Regulations and precedents, where the Commission has routinely held, despite some potential overlap between the two services, that a carrier falling under one category of motor carrier service lacks standing to protest applications for a different transportation service. For these reasons, the Commission should grant interlocutory review, answer the Material Question, and dismiss the Protest filed by Executive Transportation.

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) (hereinafter, "*K&F Medical Transport*").⁵

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, Executive Transportation proceeded to file a Protest to the Allegheny County Application, despite the obvious differences between the two services.

⁵ 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).

The Interim Order relied on statements made in the Allegheny County Application and determined that the experimental service proposed by Applicant is similar to the limousine service offered by Executive Transportation. Interim Order, p. 5. 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 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. Allegheny County Application, Attachment A, p. 1. On such grounds alone, Lyft's proposed service is distinct from traditional transportation services.

The Interim Order further alleged that the Allegheny County Application failed to establish a particular restriction on the proposed experimental transportation service that would differentiate it from the limousine service offered by Executive Transportation. Interim Order, p.5 However, the ALJs failed to mention the cornerstone of 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 vehicles. Allegheny County 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.

Finally, the ALJs' finding that Lyft applied a "narrow view of standing" is also in error. Interim Order, p. 5. Lyft simply applied the standard that the Commission had applied in prior cases. 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.⁶ As for Executive Transportation, the Interim Order unreasonably conferred standing where the service proposed by Lyft poses no actual or potential conflict. The ALJs appear to interpret this standard to mean that standing shall be granted if, in any situation, an applicant's service could be applied to meet a transportation need that could also be met by the protestant's existing service. Interim Order, p. 5. 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 Transport*, p. 8. Of course, there may be circumstances 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 transportation network service meets a vastly different public demand than limousine service.

⁶ 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).

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 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.⁷ For example, the presiding ALJs have scheduled hearings in the Allegheny County 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.⁸ 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 Executive Transportation 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 Executive Transportation's Protest would reduce the number of

⁷ Other than Executive Transportation, the sole protestant to the Allegheny County Application is JB Taxi LLC ("JB Taxi").

⁸ Lyft would not object to an earlier or preliminary resolution of this Matter through a Secretarial Letter, if deemed appropriate by the Commission.

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.⁹

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 Allegheny County Application to Protests beyond those reasonably anticipated to be permitted based on the Commission's prior application of its Regulations.

If Executive Transportation is permitted to protest the Allegheny County 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 matters at issue in this proceeding. *See* ETA Order, Ordering Paragraph No. 5, p. 23. Therefore, any claim or issue that Executive Transportation 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

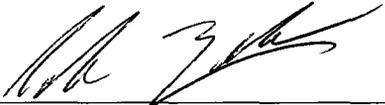
⁹ To the extent that the Commission questions whether dismissing Executive Transportation's Protest would cure an irreparable harm or prejudice in light of the parallel Statewide Application, Lyft submits that the issues in the two proceedings are not analogous. For example, a party to the Allegheny 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 Protest.

in this proceeding. Further, if Lyft reached a resolution of contested matters with JB Taxi, Executive Transportation would retain status to challenge the settlement as the only remaining protestant. This plausible scenario would constitute an absurd result as Executive Transportation would be the sole party objecting to Lyft's Allegheny County Application, despite failing to show authority to operate in Allegheny County in actual or potential conflict with the proposed service.

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

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

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