

September 10, 2014

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

Docket No. A-2014-2415045, Application of Lyft, Inc.  
A-2014-2415047, Application of Lyft, Inc.

Dear Secretary Chiavetta:

On August 30, 2014, I attempted, unsuccessfully, to file a Reply to Motion for Protective Order in the above-captioned proceedings in compliance with the Presiding Officers' abbreviated schedule for replies. Due to my oversight, the filing was not transmitted to the Commission as best as I can determine. A copy of the confirming advice is attached, showing only that the pleading was downloaded but apparently not transmitted in the manner required. Consistent with practices in these proceedings, however, a copy was served at that same time (August 30, 2014) upon each of the parties by email, and copies provided to the Presiding Officers as the parties were instructed. My understanding is that no party has been prejudiced.

By this correspondence, I am re-submitting the pleading for your further handling as may be appropriate in the above-referenced dockets. Hopefully, they may be accepted for filing in the dockets. Your courtesies are appreciated.

Very truly yours,

/s/ electronically filed

David W. Donley  
Attorney for Protestant  
412.331.8998

cc: Adeolu A. Bakare, Esquire  
Michael S. Henry, Esquire  
Mr. Samuel R. Marshall, CEO and President  
Lloyd R. Persun, Esquire  
Frederick N. Frank, Esquire c/o Zachary N. Gordon  
Administrative Law Judge Mary D. Long  
Administrative Law Judge Jeffery A. Watson



PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Description:	Application of Lyft, Inc. also submitted for filing in A-2014-2415947, Application of Lyft, Inc.

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File Name	Document Class	Document Type	Upload Date
Lyft Inc - reply to motion for protective order.pdf	Communication	Answer to Petition	8/30/2014 2:00:00 PM

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2415045  
APPLICATION OF LYFT, INC

DOCKET A-2014-2415047  
APPLICATION OF LYFT, INC

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REPLY OF PROTESTANT J.B. TAXI LLC  
IN OPPOSITION TO PETITION FOR PROTECTIVE ORDER  
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Protestant, JB Taxi LLC t/a County Taxi Cabs submits its reply in opposition to the relief requested by Applicant in the Petition for Protective Order filed August 29, 2014. This reply is submitted in accordance with the Commission's direction at the conclusion of the public hearing convened in these matters on August 27, 2014. In opposition, Protestant avers as follows:

1. Admitted
2. Denied as stated. The claim that Applicant operates in a highly competitive industry is self-serving and wholly unsupported by any facts or other basis to aid in evaluating the claim. To the extent meaningful competition exists, Protestant believes it is limited to a small portion of western Pennsylvania even though service is proposed statewide. Only three companies currently compete in experimental services, all three of which are under the control of senior executives committed to the Allegheny County marketplace at a time contemporaneous with or prior to time periods for which information is requested. None of the competitors have or will rely upon Applicant's data in the planning or operation of their businesses. A recitation of the number of applications pending does not substantiate any aspect of the characterization "highly competitive."
3. Denied. By way of further answer the data requested is limited to three items, each reflecting an aggregate total number of rides. The data requested will not correspond to any other information related to fares, revenues, earnings, origins, destinations, customers, time,

day or frequency of service requested or services provided, expenses or commissions. The data could not be reasonably correlated to any operational aspect of any specific business plan.

4. Denied. With respect to any characterization of an industry as highly competitive, Protestant incorporates its response set forth at Paragraph 2 above. With respect to any proposed Form E, Protestant responds that Form E is a standardized document, its contents designed under the auspices of the National Association of Regulatory Utility Commissioners for use by insurance companies. Protestant questions any basis for suggesting that Applicant rather than its insurer would have any proprietary rights to a standardized form or information contained on a standardized form required to be used under the Public Utility Code.

With respect to its insurance policies, Protestant asserts that public disclosure of policy language, policy limits, covered risks and policy exclusions are all factors which the traveling public is entitled to know in order to evaluate the services available and related risks to be borne when using the services of a public utility. Additionally, Applicant's Terms of Service – July 28, 2014, specifically incorporate by reference all of the policy language and provisions now claimed to be proprietary even though Applicant's customers are currently bound to honor them without disclosure.

5. Protestant does not oppose the redaction of that very limited text in any insurance policy indicating the dollar amount paid or to be paid for the specific policy. Protestant's consent to redaction does not extend to any text in the policy explaining how the premium expense is to be calculated or who is to pay for the coverage.

In all other respects, the statements are denied. The relevance of documents sought in lawful discovery processes available to the parties should not be determinative of a claim to proprietary or confidential status. Applicant has failed to register any objection to the request for production of documents. Relevancy depends upon the nature and facts of the individual case, and any doubts are to be resolved in favor of relevancy and permitting discovery. Koken v. One Beacon Insurance Company, 911 A.2d 1021 (Pa.Cmwlth. 2006). In these proceedings, Applicant's Terms of Service contractually bind all customers and drivers to policy provisions which Applicant now suggests the public is not entitled to read and understand. The nature and facts of this case, on balance, should dictate public disclosure.

6. The requested relief should be denied except as specifically set forth at Paragraph 5.
7. Denied.

#### Argument

Applicant bears the burden to demonstrate that the potential harm in public disclosure of information suggested to be proprietary would be substantial and that the harm from public disclosure without restriction outweighs the public's interest in free and open access to the administrative hearing process. 52 Pa.Code § 5.365(a) *emphasis added*. The Commission should consider the following factors,

- (1) the extent to which the disclosure would cause unfair economic or competitive damage.
- (2) the extent to which the information is known by others and used in similar activities.
- (3) the worth or value of the information to the party and to the party's competitors.
- (4) the degree of difficulty and cost of developing the information.
- (5) other statutes or regulations dealing specifically with disclosure of the information, together with other relevant information. 52 Pa.Code §5.365(a.)

#### Data specified by Commission Order

Applicant fails to identify any facts or other significant basis by which the Commission might conclude the industry is highly- competitive. To the contrary, Applicant's public statements indicate that the proposed service is simply the logical extension of a casual and occasional practice that's been going on for many years.

Ridesharing, where non-professionals with vehicles provide rides to friends, neighbors, and casual acquaintances, is nothing new. Consumers have engaged in ridesharing for many decades, utilizing such low-tech forums such as office carpooling lists, commuter pick-up lines, and employer and community rideboards. See *Revised Written Testimony of April Mims, Public Policy Manager for Lyft, Inc*, dated August 28, 2014, at Docket M-2014-2431451, Page 2, lines 18-21. (*Attachment A to this Reply*)

Applicant's references to six other applications does not demonstrate the existence of any particular marketplace nor indicate any logical basis to sustain a claim that a tally of completed trips looking back over the past six-months could reasonably translate or be translated into to a logical understanding or conclusion as to how a marketplace might work. Any suggested harm remains unspecified and unquantified. Indeed, there remains a substantial

basis to find that the services provided in the six-month period are in fact those of a passenger transportation broker, and none of the six applications identified by Applicant seek broker's authority.

The information is, however, directly related to the task to evaluate the issue of whether Applicant has the propensity to operate safely and legally. A finding on this issue is likely to be required. 52 Pa. Code § 41.14(b.) Should the protective order be granted, the prospect will arise that the Commission and parties would not be able to disclose publicly the reasons and details supporting the outcome of these proceedings, regardless of that outcome. The Commission has noted the important aspect of public perception.

We are not blind or deaf to the public opinion, at least in the Pittsburgh area, that the transportation needs of many individuals are not adequately met by currently certificated carriers. Nor are we unmindful of the potential benefits of the service proposed by Lyft .... Docket P-2014-2426847, *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order*, Order entered July 1, 2014, slip opinion at page 11.

On balance the Commission should conclude there is no valid basis to deprive the public of details relied upon in adjudicating these proceedings because the data requested have a bearing on the outcome. In addition, public disclosure would provide the public with added details about the management culture in place at the time Applicant's services were introduced to the area, and prospectively, management's likely approach to continuing operations or expansions within the Commonwealth should service be authorized on a permanent basis in Allegheny County but not authorized in the statewide docket.

Applicant provides no information relating any difficulty, burden or expense associated in producing the information anticipated by the Commission and parties. The Commission may accordingly conclude that it will not impose a burden or significant expense.

#### Form E

Applicant apparently will come up with its own "proposed Form E" in lieu of the standardized form and contents. To Protestant's understanding, most insurer's and not the Applicant would meet the Commission's requirements through an electronic transmission of information addressed to standardized requirements. At no point prior to the instant request

for relief has Applicant provided information about the intention to customize what its insurer is required to file. The development should be thoroughly explored in a public process if the public is to have confidence in the fair and impartial administration of insurance requirements arising under the Public Utility Code.

Additionally, to the extent to which a Form E, or Form E information, has already been transmitted by Applicant's insurer to the Public Utility Commission in connection with the ETA certificate, the information now claimed to be proprietary is already a part of the Commission's record without any notice or condition that it be shielded from public disclosure.

### Insurance Policies

Any concern suggested by Applicant over a competitive or other economic harm related to public disclosure should be afforded little weight when compared with the traveling public's right to understand thoroughly whether there might be any additional, unprotected risks inherent in so-called "ride-sharing." As matters currently stand, the Applicant has acknowledged that the insurance coverages originally proposed in these proceeding are not the coverages currently in place and presumably will not be those upon which Applicant will rely in presenting its case. Full public disclosure would permit members of the public as well as the insurance experts<sup>1</sup> involved in these proceeding to compare and to contrast the Applicant's public claims with the policy language which will eventually be used to determine the extent of coverage, exclusions, and the insurer's duties, if any, owed to a claimant.

Open and public discourse would be the better means of assuring a public understanding of the protections anticipated from providers relying upon unconventional policies. Ride-sharing and TCN services are different from more traditional passenger services because, in the case of those proposed by Applicant, patrons requesting service will be required to enter into binding contracts with the Applicant before traveling, the so-called Lyft Terms and Conditions of Service – July 24, 2014 (excerpts attached as Attachment B.) Depending upon the

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<sup>1</sup>Important and learned people have recently observed in connection with 'ride-sharing' and TCN services that the Commission's staff may benefit from experts employed outside of the agency in order to understand immediately and comprehensively the likely construction and interpretation that will be given to proprietary or customized insurance policies. At the August 28, 2014, hearing convened at Docket M-2014-2431457, Honorable James H. Cawley, Commissioner, noted that the Commission's staff may need to develop an understanding with the Pennsylvania Department of Insurance in order to protect the public where ride-sharing or TCN services are proposed. Reference, Public Hearings en banc, Session 4 of August 28, 2014, "Insurance Perspectives."

specific policy language which Applicant wishes to shield from public scrutiny, the extent to which an insurance claimant might actually receive protection will be directly affected by the so-called Terms of Service. They include requirements for Indemnities in Applicant's favor alone, limitations of Applicant's liability, a general release from all claims, again running only in Applicant's favor. More troublesome, the fine-print alerts customers and drivers, somewhat cryptically, that ...

As with any automobile insurance policy, additional insurance terms, limitations, and exclusions apply. Lyft Terms of Service – July 28, 2014 Page 10, Protestant's proposed exhibit, copy attached as Attachment B Page 3. (Highlighting added)

Since customers and drivers are to be lawfully bound by any "...additional insurance terms, limitations and exclusions," the Commission should conclude, on balance, that the traveling public deserves access to the policy language and all related provisions in advance of using the service proposed. The public's interest will be served by shining the brightest of lights upon all of details, any of the shortcomings, and all of the benefits of the liability insurance aspects inherent in Applicant's approach to providing a public utility service.

#### CONCLUSION

For the reasons, the Commission should decline to issue any protective order and all of the relief requested by Applicant except that to which Protestant has consented at Paragraph 5 above.

*electronically filed*

David Donley  
Attorney for JB Taxi LLC  
3361 Stafford Street  
Pittsburgh PA 15204-1441



Certificate of Service

I hereby certify that I have this day served a copy of the foregoing Reply to Petition for Protection Order upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

James P. Dougherty, Esquire  
Barbara A. Darkes, Esquire  
Adeolu A. Bakare, Esquire  
McNees Wallace & Nurick LLC  
PO Box 1166  
Harrisburg PA 17108-1166

Bryan L. Heulitt Jr, Esquire  
Philadelphia Parking Authority  
701 Market Street. Suite 5400  
Philadelphia PA 19106

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

Carl W. Hovenstine, Vice President  
Pauls Cab Service Inc  
735 Market Street  
Sunbury PA 17801

Lloyd R. Persun, Esquire  
Persun & Heim PC  
PO Box 659  
Mechanicsburg PA 17055-0659

Mr. Samuel R. Marshall, President  
The Insurance Federation of Pennsylvania  
1600 Market Street, Suite 1720  
Philadelphia PA 19103

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

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Piatt Place - Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Dated this 2nd day of September, 2014

*electronically filed*

David W. Donley  
Attorney for J.B. Taxi t/a County Taxi Cab  
3361 Stafford Street  
Pittsburgh PA 15204-1441  
(412) 331-8998  
Pa ID 19727

1 Lyft is a TNC, which refers to a company offering a software application that allows  
2 individuals seeking transportation to connect with qualified drivers. This is an innovative  
3 form of prearranged transportation accessible through a mobile software application  
4 (available on both the Apple iOS and Android mobile operating systems).

5

6 The need and public necessity for this service is clear. Existing prearranged and on-  
7 demand transportation services rely only on full-time professional drivers, unnecessarily  
8 limiting the scope of authorized services available to meet fluctuating consumer demand  
9 for transportation. This is a very important point because all too often Lyft is viewed  
10 solely as an alternative to taxicab service or public transportation. In reality, Lyft is  
11 intended to be an alternative to vehicle ownership altogether. Many consumers expend  
12 tremendous resources on personal vehicle ownership and maintenance. Specifically,  
13 owning and operating a vehicle is the second highest U.S. household expense at  
14 \$9,000 per year.<sup>1</sup> As Lyft's platform proliferates, consumers in many markets will be  
15 able to forego personal vehicle ownership because Lyft can fill the transportation gaps  
16 left by existing transportation services.

17

18 Ridesharing, where non-professionals with vehicles provide rides to friends, neighbors,  
19 and casual acquaintances, is nothing new. Consumers have engaged in ridesharing for  
20 many decades, utilizing such low-tech forums such as office carpooling lists, commuter  
21 pick-up lines, and employer and community rideboards. The benefits of low-cost  
22 ridesharing are clear and unmistakable; ridesharing reduces single occupancy vehicle  
23 trips while providing tremendous societal benefits, including enhanced access to  
24 transportation and reductions in traffic congestion and greenhouse gas emissions.

25

26 As with any new innovation or variance from traditional and long-standing practices,  
27 concerns regarding the applicability of existing regulations exists. While Lyft's service  
28 differs from traditional motor carrier services, the company understands that effective  
29 regulation is key to expanding Lyft's service in a safe and responsible manner. To that  
30 end, Lyft strives to work with regulators to develop regulatory oversight appropriate for

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<sup>1</sup> <http://www.usatoday.com/story/news/nation/2013/04/16/aaa-car-ownership-costs/2070397/>.

APPLICATION OF LYFT, INC.  
Docket Nos. A-2014-2415045 and A-2014-2415047

RESPONSES OF LYFT, INC. TO  
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS  
OF JB TAXI LLC T/A COUNTY TAXI CABS

Q.3. Please admit or deny that the written document attached to these interrogatories (Lyft terms of service – July 28, 2014) is an accurate reproduction of Applicant's terms and conditions to which users of Applicant's software must subscribe or consent in order to use the services proposed in Dockets A-2014-2415045 and A-2014-2415047.

**Response:**

**The attached is a correct representation of the general terms and conditions published on Lyft's website. We note that, as set forth in the attached terms of service, additional terms and conditions may be applicable to specific customers, depending on the jurisdiction in which service is provided.**

**Date: August 29, 2014**

**Response Prepared by: Joseph Okpaku, Public Policy Director, Lyft, Inc.**

[Lyft](#)

- [How it works](#)
- [Safety](#)
- [Drive](#)
- [Stories](#)

# Lyft Terms of Service

July 28, 2014

This following user agreement describes the terms and conditions on which Lyft, Inc. offers you access to the Lyft platform.

Welcome to the user agreement (the "Agreement" or "User Agreement" or "Terms of Service") for Lyft (the "Lyft Platform"), an application owned and operated by Lyft Inc., a Delaware corporation, whose principal office is located at  
*548 Market St #68514, San Francisco, CA 94104*

. This Agreement is a legally binding agreement made between you ("You," "Your," or "Yourself") and Lyft, Inc. ("Lyft," "We," "Us" or "Our").

Lyft is willing to license, not sell, the Lyft Platform to You only upon the condition that You accept all the terms contained in this Agreement. **By signing up with or by using the Lyft Platform, You indicate that You understand this Agreement and accept all of its terms.** If You do not accept all the terms of this Agreement, then Lyft is unwilling to license the Lyft Platform to You.

This paragraph applies to any version of the Lyft Platform that you acquire from the Apple App Store. This Agreement is entered into between You and Lyft. Apple, Inc. ("Apple") is not a party to this Agreement and shall have no obligations with respect to the Lyft Platform. Lyft, not Apple, is solely responsible for the Lyft Platform and the content thereof as set forth hereunder. However, Apple and Apple's subsidiaries are third party beneficiaries of this Agreement. Upon Your acceptance of this Agreement, Apple shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against You as a third party beneficiary thereof. This Agreement incorporates by reference the [Licensed Application End User License Agreement published by Apple](#), for purposes of which, You are "the end-user." In the event of a conflict in the terms of the Licensed Application End User License Agreement and this Agreement, the terms of this Agreement shall control.

The Lyft Platform provides a means to enable persons who seek transportation to certain destinations ("Riders") to be matched with persons driving to or through those destinations ("Drivers"). For purposes of this Agreement these services shall collectively be defined as the "Services". This Agreement describes the terms and conditions that will govern Your use of and participation in the Lyft Platform.

- Cash prohibited. All Donations and Payments made by Passengers to Drivers shall only be made through the Lyft Platform. Cash Donations and/or Payments are strictly prohibited. Neither Drivers nor Passengers may make or accept Payments or Donations in cash under any circumstances.
- Administrative Fee. Lyft receives an administrative fee of up to 20% (the "Administrative Fee") of each Charge or Donation of more than \$0 that a Rider makes to a Driver, net of the \$1 per ride trust & safety fee (the "Trust & Safety Fee"). For the sake of clarity, the Administrative Fee is assessed on a Donation or Charge, as applicable, after the assessment of the Trust & Safety Fee.
- Refunds. The full amount of the Donation or Charge, as applicable (including the Administrative Fee and the Trust & Safety Fee), is charged immediately following completion of such election to the Rider's authorized credit card and transferred (less the Administrative Fee) to such Driver's account. All payments made are non-refundable. This no-refund policy shall apply at all times regardless of a Rider's decision to terminate usage of Lyft, our decision to terminate a Rider's usage, disruption caused to our Services either planned, accidental or intentional, or any other reason whatsoever.
- Promotional Offers. Lyft, at its sole discretion, may make available promotional offers with different features to any of our customers. These promotional offers, unless made to You, shall have no bearing whatsoever on Your offer or contract. Lyft may change its Administrative Fee as we deem necessary for our business. We encourage You to check this Agreement periodically if You are interested in keeping abreast of the rate of our Administrative Fee.
- Cancellation Fee. In the event that a Rider cancels a ride request on the Lyft Platform more than 5 minutes after such request is made, Rider agrees to pay a "Cancellation Fee" of \$5.
- Damage Fee. In the event that a Driver reports to Lyft that a Rider has in any manner materially damaged the Driver's vehicle, Rider agrees to pay a "Damage Charge" of either \$100 or \$250 depending on the extent of the damage (as determined by Lyft in its sole discretion), which shall constitute full payment for Driver's cost of repairing or cleaning the vehicle, or otherwise remediating the damage. The Damage Charge shall be transferred to Driver. Lyft reserves the right (but is not obligated) to verify or otherwise require documentation of damages prior to processing the Damage Charge.
- Facilitation of Payments. All Donations or Charges, as applicable, shall be facilitated through Stripe, Inc., Lyft's third-party payment processing service.

## Insurance

Lyft purchases [various insurance coverages](#) to protect Drivers, Riders and third parties (these policies do not apply in the State of New York). **As with any automobile insurance policy, additional insurance terms, limitations, and exclusions apply.** We do not procure insurance for, nor are we responsible for, personal belongings left in the car by Driver(s) or Rider(s).

This is an unofficial summary of Lyft's master insurance policy and may not always be up-to-date. None of the statements in this section should be interpreted as binding and are provided for quick reference only.