

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Lfyt, Inc. : Docket No. A-2014-2415045  
: Docket No. A-2014-2415047

**BRIEF OF THE INSURANCE FEDERATION OF PENNSYLVANIA IN  
OPPOSITION TO THE APPLICATIONS OF LYFT, INC.**

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## **STATEMENT OF THE CASE**

This case involves two applications for a new form of taxi service – the recruitment and coordination of nonprofessionals to become part-time taxi drivers finding riders over the internet. The Insurance Federation of Pennsylvania, Inc. filed Protests to the applications for inadequate insurance. Hearings on insurance issues were held, and limited discovery on insurance issues was allowed. Throughout, the Federation’s concern has been that the applications show proper insurance and general protections of the public. The question before the Commission is whether the applications show this. The answer is no.

## **PROPOSED FINDINGS OF FACT**

1. The insurance Lyft, Inc. (“Lyft”) proposes in these Applications is divided into three stages: Stage 1, when the Lyft driver is using and is available on the Lyft platform (“on app”) but is between trips with passengers and is prior to being matched with passengers; Stage 2, when the Lyft driver has accepted and is matched with a trip request through the app; and Stage 3, when the Lyft driver is in the process of a trip with the Lyft passenger. Lyft Exhibits 1-A and 1-B; Insurance Federation Exhibits 1-3; Testimony of Lyft witness Joseph Opaku, pp. 261-263.

2. The insurance Lyft proposes in Stage 1 is contingent coverage, meaning it does not apply unless the Lyft driver's personal auto insurance policy is unavailable or the driver's personal auto insurer declines coverage for a claim during this time. Lyft Exhibits 1-A and 1-B; Insurance Federation Exhibit 1; Okpaku testimony, pp. 265, 386; testimony of Insurance Federation witness Jonathan Greer, p. 460.
3. The insurance Lyft proposes in Stage 1 does not contain first party benefits for either the driver, passengers or pedestrians. Insurance Federation Exhibit 1; Greer testimony, p. 460.
4. The insurance Lyft proposes in Stage 1 does not provide a split of coverage in any amount for bodily injury per person, bodily injury per accident and property damage per accident. Insurance Federation Exhibit 1; Greer testimony, p. 460..
5. The Lyft pricing program is intended to encourage its drivers to be "on app" – Stage 1 - and to "be on the road" and available for accepting trip requests during periods of peak demand, and it anticipates drivers will or may be driving while "on app." Okpaku testimony, pp. 274-275, 389-390, 404.
6. Lyft does not know what will constitute a denial from a driver's personal auto insurer that would trigger its coverage during Stage 1, or whether Lyft's insurer would reserve the right to challenge any such denial, or whether Lyft's insurer

would provide the defense in any claim. Okpaku testimony, pp. 392-396, 399-400; Insurance Federation Exhibit 4.

7. The insurance Lyft proposes in Stages 2 and 3 does not provide a split of coverage in any amount for bodily injury per person, bodily injury per accident and property damage per accident. Insurance Federation Exhibit 3.
8. The insurance Lyft proposes in Stages 2 and 3 is primary only for a driver's personal auto policy, not any commercial policy or endorsement that may cover the vehicle. Testimony of Lyft witness Kate Sampson, p. 575; Insurance Federation Exhibit 3.
9. It is unclear whether the insurance Lyft proposes in Stages 2 and 3 provides first party coverage of the driver in the amount set forth in 75 Pa.C.S. Section 1711. Okpaku testimony, pp. 391-392, 424 ; Insurance Federation Exhibit 3.
10. The insurance Lyft proposes does not provides coverage when a driver has discharged a passenger and is returning from that ride. Testimony of Eastern PA Taxi Cab Drivers witness Gene Brodsky, p. 540.
11. The insurance Lyft proposes for collision and comprehensive coverage is contingent on its driver's having such coverage, too, and with a \$2,500 deductible. It is unclear whether this coverage applies during all three stages and

whether it is contingent on the driver's personal auto insurance being unavailable or the personal auto insurer declining coverage. Insurance Federation Exhibit 2.

12. It is unclear whether the insurance Lyft proposes in Stages 1 through 3, or for collision and comprehensive coverage, will cover any and all claims involving the driver, passengers and pedestrians even if the driver fails to have personal auto insurance in force at the time of the accident. Greer testimony, pp. 462-463.
13. The contingent coverage Lyft proposes will result in a confusing and delayed claims process for consumers with claims arising out of accidents with Lyft drivers. Greer testimony, pp. 507-509.
14. Lyft regards its drivers as "nonprofessionals" for whom the commercial activity of transporting passengers for hire in their personal vehicles is a part-time and new occupation, and for whom commercial insurance coverage and exposure are also new. Okpaku testimony, p. 396; Greer testimony, 464.
15. Lyft does not propose any independent or ongoing verification of its drivers' personal insurance policies beyond requesting a copy of each driver's Financial Responsibility card at the outset and on the renewal date of the policy listed on such card. Okpaku testimony, pp. 359-360, 373-377; Greer testimony, 464-465.

16. Lyft does not propose to examine its drivers' personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those policies may be subject to termination or new rates if their insureds become Lyft drivers. Okpaku testimony, pp. 369-372.
  
17. Lyft does not propose to direct its drivers to notify their personal auto insurers, in writing, of their intent to operate in Lyft's service, or to maintain a copy of any such notices from their drivers to their insurers for any period of time. Lyft's Answer to Insurance Federation Interrogatory 4; Okpaku testimony, pp. 367-369; Greer testimony, p. 462.
  
18. Lyft does not propose, in any standard or uniform way, to advise its drivers to check with their personal auto insurers about potential gaps in coverage or potential changes in or cancellation of their personal auto insurance policies. Okpaku testimony, p. 401; Geer testimony, pp. 462-463.
  
19. A person becoming a Lyft driver faces potential changes in that person's personal auto insurance, including possible cancellation or an increase in rate. Greer testimony, p. 463.
  
20. A person becoming a Lyft driver faces possible personal financial liability as a result caused by gaps in the coverage Lyft proposes when matched against

whatever personal insurance the Lyft driver may have and any livery exclusions in such insurance. Greer testimony, pp. 464, 513.

21. A person becoming a Lyft driver faces possible personal financial responsibility as a result of terms and conditions Lyft imposes on its drivers in its agreements with them, including a provision that the driver is “solely responsible for any and all liability which results from or is alleged as a result of the operation of the vehicle such driver uses to transport riders, including but not limited to personal injuries, death and property damages.” JB Taxi Exhibit 2; Okpaku testimony, pp. 404-406, 410-411; Greer testimony, p. 461.
22. Nothing in Lyft’s application, in the materials it will share with its drivers, or in its training program for its drivers explains how it will educate its drivers on the three stages of insurance and the three insurance policies, and the differences in the stages and the insurance among them. JB Taxi Exhibit 2; Greer testimony, p. 513.
23. Nothing in Lyft’s application, in the materials it will share with its drivers, or in its training program for its drivers explains how it will educate its drivers on their personal liability exposure under its agreements with them or that may result from its proposed insurance. JB Taxi Exhibit 2; Okpaku testimony, pp. 353-359; Greer testimony, p. 513.

24. Nothing in Lyft's application, in the materials it will share with its drivers, or in its training program for its drivers explains how it will educate those drivers on how to access Lyft's proposed three stages of insurance, or how to inform passengers or third parties how to do so in the event of an accident or claim. JB Taxi Exhibit 2; Okpaku testimony, p. 381; Greer testimony, pp. 465-466, 513.
25. Lyft does not propose to provide its drivers with insurance cards, declarations pages or copies of the insurance policies covering them in any of the three stages or periods, but will give them a link to some sort of policy description from Lyft, not its insurer. Okpaku testimony, pp. 318-319, 379-381.
26. A thorough claims process, including information on where and how to submit a claim and to find out about available insurance coverage, is an integral part of any credible and well-regulated auto insurance program. Greer testimony, p. 513.
27. Lyft's principal witness on its proposed insurance coverages, its proposed communications (or lack thereof) with its drivers, passengers and third parties, and its claims handling process was Joseph Okpaku, Public Policy Director.
28. Mr. Okpaku is not involved with the development and implementation of Lyft's insurance programs, its proposed insurance policies, its insurance verification system for drivers, its training program (or lack thereof) for its drivers on handling claims, and or its claims handling system. Insurance coverage and

claims handling issues at Lyft are done by other divisions within the company and by Lyft's insurer. Okpaku testimony, pp. 336-339, 361-364, 406.

29. Lyft, through Mr. Okpaku, does not know whether it has had any claims during Stage 1 or how it, or its drivers' personal auto insurers, has handled such claims. Okpaku testimony, p. 251.

30. Lyft does not inform its insurer about its drivers or their records, and its insurer is not the initial contact on claims, in contrast to standard and prudent underwriting and claims handling practices in the insurance industry. Okpaku testimony, pp. 319-320; Brodsky testimony, pp. 541-542.

### **PROPOSED CONCLUSIONS OF LAW**

1. Lyft has failed to satisfy the insurance requirements in Section 32.11(b) of Title 52 of the Pennsylvania Code applying to passenger carrier insurance.
2. Lyft is responsible for satisfying the insurance requirements in Section 32.11(b) of Title 52 of the Pennsylvania Code applying to passenger carrier insurance during all three stages when its drivers are available, matched or carrying

passengers through its platform or app, and also when its drivers are returning from a trip carrying a passenger.

3. Insurance that is contingent on another insurer's acceptance or denial of a claim, as proposed by Lyft, even if exceeding the amounts set forth in Section 32.11(b) of Title 52 of the Pennsylvania Code for passenger carrier service, fails to satisfy the insurance requirements in that section.
4. The provision of insurance that does not provide a split of coverage in the amounts set forth in Section 32.11(b) of Title 52 of the Pennsylvania Code for bodily injury per person, bodily injury per accident and property damage per accident, as proposed by Lyft, fails to satisfy the insurance requirements in that section.
5. The provision of insurance that does not provide first party benefits for the driver, passengers or pedestrians in the amounts set forth in Section 32.11(b) of Title 52 of the Pennsylvania Code, as proposed by Lyft, fails to satisfy the insurance requirements in that section.
6. The insurance coverage and program proposed by Lyft fails to protect "persons or property of their patrons and the public," as required by Section 512 of the Public Utility Code, 66 Pa.S.C.A. Section 512.

7. Lyft's applications and its supporting materials and testimony are incomplete and inadequate to demonstrate compliance with the insurance requirements in Section 32.11(b) of Title 52 of the Pennsylvania Code.
8. Lyft's applications and its supporting materials and testimony are incomplete and inadequate to demonstrate compliance with the protection of the public and passengers, as required by Section 512 of the Public Utility Code, 66 Pa.S.C.A. Section 512.
9. Lyft's lack of any communication between either it or its drivers with its drivers' personal auto insurers, fails to satisfy the insurance requisites in Section 32.11(b) of title 52 of the Pennsylvania Code and the public protection requirement of Section 512 of the Public Utility Code, 66 Pa.C.S.A. Section 512.
10. Lyft's lack of any meaningful communication with its drivers about possible ramifications on their personal auto policies and personal financial exposure fails to satisfy the public protection requirement of Section 512 of the Public Utility Code, 66 Pa.C.S.A. Section 512.
11. Lyft's lack of any meaningful communications with its drivers about how to handle claims or insurance inquiries in the event of accidents from passengers, third parties or law enforcement fails to satisfy the public protection requirement of Section 512 of the Public Utility Code, 66 Pa.C.S.A. Section 512.

## **PROPOSED ORDERING PARAGRAPHS OF THE RELIEF SOUGHT**

1. Lyft's applications are disapproved for failure to satisfy the Commission's insurance requirements for passenger carriers; for failure to adequately explain the parameters and conditions of its proposed insurance in the applications and supporting materials; for failure to secure notification to its drivers' personal auto insurers; for failure to educate its drivers about their insurance considerations; and for failure to provide a system for educating and training its drivers and passengers on how to process claims and seek insurance coverage.
2. Lyft's applications are remanded for revisions and further hearings on all of the aforementioned failures.
3. For Lyft's applications to be approved, it should affirmatively establish, with an affidavit or testimony from its proposed insurer or the production of the insurance policies themselves, primary insurance coverage of its drivers and their vehicles in the amounts and benefits set forth in Section 32.11(b) of Title 52 of the Pennsylvania Code during all three stages, and on any return from a completed trip.

4. For Lyft's applications to be approved, it should affirmatively establish, with an affidavit or testimony from its proposed insurer or the production of the insurance policies themselves, that its coverage is primary as applied to any other coverage, personal or commercial, of its drivers.
5. For Lyft's applications to be approved, it should affirmatively establish that its coverage is primary irrespective of other agreements, terms or conditions with its drivers or passengers, and irrespective of whether its drivers' personal insurance, vehicle registration or license are in force. This shall include an affidavit or testimony from its proposed insurer, the production of the insurance policies themselves and any agreements, terms and conditions Rasier has with its drivers or passengers.
6. For Lyft's applications to be approved, it should demonstrate that it instructs its drivers to notify their personal auto insurers, and it should obtain copies of its drivers' notifications consistent with the Commission's July 24, 2014 ETA Order.
7. For Lyft's applications to be approved, it should demonstrate a program whereby it advises its drivers to consult with their personal auto insurers about potential gaps in coverage or potential changes in or cancellation of their personal auto insurance.

8. For Lyft's applications to be approved, it should demonstrate a program whereby it educates its drivers on the insurance coverage it provides them, specifically including any materials describing that coverage and copies of such coverage, and a process for its drivers contacting it with any insurance questions.
  
9. For Lyft's applications to be approved, it should demonstrate a program whereby it educates its drivers on proper handling of claims in all three stages, specifically including the information to be provided to passengers and third parties with potential claims, and to law enforcement authorities. Such information should include how to contact Lyft's insurer, not just Lyft.
  
10. For Lyft's applications to be approved, it should present at a later hearing a person from its proposed insurer qualified to answer questions about its proposed insurance.
  
11. In the interim, the Commission's July 24, 23014 ETA Order granting Lyft emergency temporary authority is suspended.

## SUMMARY OF ARGUMENT

**Lyft's applications are not ready for the Commission's approval; Lyft's taxi program is not ready for Pennsylvania consumers.**

These applications present the Commission with a potential breakthrough in how passenger carrier services can be provided in Pennsylvania. Lyft proposes new technologies to enable “nonprofessionals” to become part-time cabbies, using their own cars as taxis. It hails this as a miraculous innovation, providing greater efficiency in personal transportation throughout the Commonwealth, valuable supplemental income for people who never envisioned being taxi drivers, the potential for economic development in new areas, a potential easing of road congestion and even an improved environment.

All that may be true. But for all the hype, the applications don't propose adequate insurance or adequate insurance education for Lyft's drivers, its passengers and the general public, and they leave unanswered several crucial insurance-related issues – and they therefore fail to provide the public protection that is a core standard of the Commission's review.

First, the insurance Lyft proposes is not in the amount and for the benefits required in the Commission's regulations. This is especially true for Stage 1 when its drivers are “on app”, available and “on the road” but not yet matched with or transporting passengers;

during this period, which Lyft's pricing plan is meant to encourage, Lyft proposes only contingent coverage, and without the first party benefits in the Commission's regulation. Further, the applications are unclear – to be kind – on whether Lyft's insurance in any of the three stages will apply in a number of other scenarios, given vagaries in the proposed policies themselves and the conditions in Lyft's other documents and agreements with its drivers. And the applications fail to provide coverage when a driver is returning from a trip.

Second, Lyft fails to provide any meaningful education of its drivers – who it admits are neophytes as part-time cabbies – on their insurance exposure and how they should handle claims. As such, its drivers' understanding of whatever insurance Lyft provides is inadequate; whatever problems it may create for the drivers' personal insurance, obscured; and whatever is to be done in the event of a claim, nonexistent. That puts the drivers at risk, and it puts passengers and other parties at risk: Lyft's drivers are ill-equipped to understand and explain their Lyft coverage and the processing of claims under that coverage when accidents inevitably occur.

Lyft's applications must therefore be disapproved or remanded to require that Lyft provide primary coverage during all stages of its drivers' being available for, matched with and transporting passengers; and that it provide meaningful notice and education to its drivers on insurance and claims issues and processes. Innovation is great. Inadequate, ill-explained and illusory insurance is not.

## ARGUMENT

### **1. Pennsylvania's insurance requirements for Lyft's applications all go to the need for public protection.**

Section 512 of the Public Utility Code, 66 Pa.C.S.A. Section 512, sets forth the general objective and authority for the Commission to require insurance in this instance:

“The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters.”

The Commission's regulations, at Section 33.11(b), provide further detail on the required insurance:

“The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than \$35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of \$25,000 and first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. Sections 1701-1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certified vehicles shall meet the requirements of 75 Pa.C.S. Section 1711 (relating to required benefits).” 52 Pa.Code Section 32.11(b)

The Commission added more clarity to its insurance requirements for this service in its July 24, 2014 Order granting Lyft emergency temporary authority to operate in

Allegheny County. That Order examined the stages of activity of Lyft drivers, and determined Lyft must provide primary coverage insurance in at least the amounts set forth in Section 32.11(b) for the following three stages:

Stage 1 – Driver opens the App and is soliciting rides.

Stage 2 – Driver receives and accepts a ride request and travels to pick up the passenger.

Stage 3 – Driver picks up the passenger, drives the passenger to the destination, and the passenger exits the car.

In that Order, the Commission also recognized the connection between the insurance Lyft should provide to its drivers throughout all three stages, and the “valid and current liability insurance” from personal auto insurers that Lyft requires of all its drivers and their cars. The Commission ruled:

“[I]n order to avoid any confusion regarding the status of a driver’s personal insurance coverage, we will require Lyft to direct all operator/drivers to notify their insurer, in writing, of their intent to operate in Lyft’s service. Lyft is required to maintain a copy of this notification for each operator/driver during that driver’s affiliation with Lyft and for a period of three (3) years following termination of an operator’s/driver’s service. Additionally, Lyft must notify drivers/operators, in writing, whether it is providing comprehensive and collision coverage during service. Lyft must maintain copy of each notification for a period of three (3) years following termination of an operator’s/driver’s service.”  
p. 18 of the Commission’s July 24, 2014 ETA Order

The thrust in all this is to protect the public by ensuring clear and accessible insurance coverage for passenger carriers, whether conventional taxis or Lyft. It is not a balance test – nothing suggests the insurance requirements should be less stringent depending on the innovation or market desire for a particular application. Insurance can sometimes seem a wet blanket when required of newly popular services, but it is a vital component

in all passenger carrier services, with the Commission given considerable latitude to ensure every passenger carrier has meaningful coverage to protect the public.

**2. Lyft’s proposed contingent coverage in Stage 1 fails to satisfy the Commission’s insurance requirements.**

For all the ambiguities and uncertainties Lyft has created or allowed in its insurance provisions, it has made one thing clear: When a Lyft driver is “on app” and available for accepting rides – Stage 1 in the Commission’s July 24 ETA Order - Lyft’s insurance coverage will only be contingent: Before Lyft covers any claim during this stage, the claim must first go through the driver’s personal auto insurer, and the personal auto policy must be “unavailable” or the personal auto insurer must decline coverage.

That makes for meaningless coverage and considerable confusion and delay during a key period. Lyft admitted its goal is to get its drivers “on app” – as it said, “on the road” - and available for rides as often as possible, particularly during peak periods of demand. And yet it doesn’t understand the contingent coverage it proposes: It acknowledged it is not sure what constitutes a personal auto policy being unavailable or a personal auto insurer declining coverage, or whether its insurer could challenge a personal insurer’s declining coverage. As it conceded, all that is something only its insurer knows – and Lyft apparently hasn’t thought to ask. If Lyft doesn’t know the meaning of its own proposal, its drivers, passengers and the public certainly won’t.

Lyft argues its coverage during Stage 1 should only be contingent because its drivers would only be available for riders, not soliciting them, the word from the Commission's July 24 ETA Order. "Available" versus "soliciting" is a distinction without a difference – especially as Lyft acknowledged its drivers never solicit rides but only make themselves available. The Commission should disregard such disingenuous semantics.

Lyft also suggested its proposed contingent coverage is sufficient because it knows of no personal auto insurer declining coverage for claims during this period – in essence, a "what's the big deal" argument. Its witness admitted, however, it knows of no insurer accepting claims during this period, either, and its witness acknowledged that auto insurers generally have livery exclusions that may extend to this period (although its witness conceded Lyft has no intention of checking its drivers' policies on this).

The Insurance Federation's witness outlined the problems and dangers for drivers, passengers and claimants caused by Lyft's proposed contingent coverage: This means confusion and delay, as well as cost, in resolving claims, with consumers facing medical bills, repair costs and lost income and other costs without redress while contingency issues get resolved. Perhaps most telling and troubling, Lyft never challenged the Federation's witness on this – a tacit acknowledgement that speaks loudly of the problems its proposed contingent coverage will cause for the public.

Stage 1 is no different than Stages 2 and 3 in terms of proper and clear insurance requirements: There is nothing contingent in Section 32.11(b)'s requirement that Lyft

“maintain liability insurance.” The Commission should therefore disapprove these applications unless Lyft provides primary coverage during Stage 1. The public deserves the protection of clear and accessible insurance coverage during all three stages, not the confusion and delay Lyft would create through its proposed contingent coverage.

**3. Lyft’s other proposed insurance coverages also fail to satisfy the Commission’s insurance requirements.**

The applications have other gaps and uncertainties in their proposed insurance coverage that merit their disapproval.

First, Lyft is inexcusably unclear about the contingencies and caveats its agreements with its drivers create for its proposed insurance coverage. Those agreements include terms such as these:

“Lyft... has no responsibility or liability for any transportation services voluntarily provided to any rider by any driver using the Lyft platform”

“Lyft has no responsibility whatsoever for the actions or conduct of drivers or riders. Lyft has no obligation to intervene in or be involved in any way in disputes that may arise between drivers, riders, or third parties.... Drivers and riders use the services at their own risk.”

“Such Driver has a valid policy of liability insurance (in coverage amounts consistent with all applicable legal requirements) for the operation of such Driver’s vehicle to cover any anticipated losses related to such driver’s provision of rides to Riders.”

“Such Driver will be solely responsible for any and all liability which results from or is alleged as a result of the operation of the vehicle the Driver uses to transport Riders, including, but not limited to personal injuries, death and property damages.”

JB Taxi Exhibit 2, pp. 9, 13 and 21

Again, Lyft's witness was unsure what all this meant, and whether, when and how it might limit the insurance coverage Lyft proposes. And again, if Lyft is unsure of its own conditions and contingencies, its drivers, passengers and the public will be, too.

Second, Lyft's proposed coverages lack some of the benefits required in the Commission's regulations:

- Its Stage 1 coverage, in addition to being only contingent, does not contain first party benefits for either the driver, passengers or pedestrians, and does not provide for a split of coverage in any amount for bodily injury per person or per accident and property damage per accident.
  
- Its Stages 2 and 3 coverage does not provide for first party coverage of the driver, as required by Section 32.11(b)'s incorporation of Section 1711 of the Motor Vehicle Financial Responsibility Law, 75 Pa.S.C.A. Section 1711, and does not provide for a split of coverage in any amount for bodily injury per person or per accident and property damage per accident.

Further, Lyft's Stages 2 and 3 coverage is primary only as to a driver's personal auto insurance, not any commercial policy or endorsement. If that exists (as with a car the

driver uses for business use), even Lyft's Stages 2 and 3 coverage becomes "excess" – in other words, contingent – to the other coverage.

Finally, Lyft's Stages 2 and 3 coverage leave unanswered any coverage when a driver is returning from a ride – as with backing into something while leaving a passenger's driveway. That period isn't expressly contemplated in the Commission's July 24 ETA Order, but it should be here, with an affirmative duty on Lyft to provide primary coverage.

These uncertainties don't get the same attention as Lyft's proposed contingent coverage, but they merit explanation, and Lyft has failed to do so. It isn't just the differences in the coverage between Lyft's proposed policies and the Commission's regulation; it is the differences in the coverage and responsibilities between Lyft's agreements with its drivers and its proposed insurance policies. This goes to the heart of the Commission's insurance requirement: It has to be there, without qualification or contingency, and without requiring a convoluted process of going through multiple policies and other documents to see if it exists.

**4. Lyft's applications fail to provide any notice to its drivers' personal auto insurers and leave considerable uncertainty over whether its own coverage applies in any of the three stages.**

The Commission's July 24 ETA Order instructed Lyft to notify its drivers of their need to inform their insurers of becoming Lyft drivers. The logic behind that is compelling: Lyft professes the importance of its drivers having personal auto insurance as a condition of

being a Lyft driver. And as the Insurance Commissioner has noted, and the Insurance Federation's witness testified without even mild rebuttal from Lyft, a Lyft driver may face cancellation or other exposure and ramifications, including an increase in premium and personal liability exposure under his personal auto insurance: The driver should notify his personal insurer of his new occupation, both for self-protection and the public's protection.

The contingencies and uncertainties in Lyft's proposed insurance coverages heighten the importance of notifying the driver's personal auto insurer: First, Lyft's Stage 1 coverage only applies if its driver's personal auto insurer has denied coverage. Second, its agreements with its drivers present many caveats and pre-conditions that suggest the drivers, not Lyft, are responsible for any damages during all three stages, which could mean either exposure to or cancellation or re-rating of its drivers' personal auto insurance policies.

Lyft, however, says it will not require or even recommend notice from its drivers to their personal auto insurers, stating it "does not insert itself into the contractual relationship between a driver and his insurer." Presumably, it is not currently doing this despite the Commission's ETA Order, highlighting the need for a "trust but verify" approach to these applications.

Lyft's contention is ludicrous. In offering only contingent coverage in Stage 1 and in its collision and comprehensive coverage, Lyft has already "inserted itself" into its drivers'

relationships with their personal insurers. The interplay of its coverage with that of its drivers' personal auto insurance is a constant – and a constant example of where Lyft will be inserting itself into its drivers' "relationships" with their insurers in the event of a claim. It can't be ignored when claims arise; it therefore shouldn't be ignored in deciding on these applications or in Lyft's instructions and notices to its drivers.

Ironically, Lyft itself pointed out the need for a driver's personal auto insurer to be informed. When questioning the Insurance Federation's witness, it conceded its proposed insurance policies are "voluminous", and it spoke of the need for the insurance industry to be "creative" in recognizing the unique mix of personal and commercial use its drivers present. A driver's personal auto insurer can only be creative – or responsive – if it has knowledge its insureds are becoming Lyft drivers. So why the secrecy?

The need for Lyft's drivers to notify their personal insurers is paramount to the protection not just of Lyft's drivers but of their passengers and the public. There are too many uncertainties of which insurance (Lyft's or its drivers') may apply, and when and how – or if any insurance will apply.

Providing meaningful notification to the driver's personal auto insurer is hardly an impossible or impractical administrative burden on Lyft – just the opposite, it is the least Lyft should do for its partners. Given the contingencies and uncertainties in Lyft's proposed insurance coverage, the Commission should require not just notice to but

meaningful communication with its drivers' insurers, and from the outset, not just the time of claim.

**5. Lyft's applications fail to provide any meaningful education or training to its drivers or its passengers about their insurance exposure and their responsibilities and the process in handling claims.**

Lyft boasts of its "nonprofessional drivers" as people who otherwise would never have become part-time cabbies and who have no experience as commercial passenger carriers. It boasts of the training its drivers go through. It boasts about its ongoing monitoring of its drivers, claiming it will keep only the good ones "on app." And it boasts of a sincere commitment to its drivers, referring to them as its "partners."

It doesn't boast of any education or training of its drivers about their insurance exposure or how they are to handle claims in the three stages, and it doesn't boast of any education to its passengers about their own insurance exposure or how to make claims.

It can't: Based on these applications, it doesn't have any such education or training program.

That is a disservice to unsuspecting drivers and passengers. Lyft knows the insurance exposures its drivers face with their personal insurance, and with their personal liability. Whether cautioned by the Insurance Commissioner here, or any number of other regulators and legislators across the country, issues of insurance and personal liability for drivers have been prominent.

The Insurance Federation's witness testified about the potential insurance problems for drivers, passengers and the public caused by Lyft's proposed insurance, emphasizing the need for drivers to get hard facts on their Lyft coverage and to check with their own agents and insurers. And Lyft's agreements with its drivers contain considerable fine-print in their terms and conditions, fine-print its witness was unable to explain.

As with Lyft's reaction to problems the Federation's witness raised about its contingent coverage, Lyft never rebutted this or explained how it would work with its drivers and passengers to ensure they don't arise. It doesn't plan to, either.

Insurance issues always come up. The Commission should make sure Lyft has done what it can to educate its drivers and passengers from the beginning. For all its talk about a partnership with its drivers and passengers, when it comes to informing them about insurance issues, it just isn't there.

Lyft also fails to plan for any education or training of its drivers in handling claims, at least as set forth in these applications. It doesn't provide them with copies of the policies it says will cover them, or any explanation of how its contingencies will be handled in the event of a claim. It doesn't provide them with a financial responsibility card with the pertinent information of where to go with a claim. And it doesn't educate its drivers on what to do in the event of a claim – how to report it, how to inform passengers and third parties of where to go with a claim, or what the claims handling process will be.

For insurance to be meaningful – to be “real” insurance that protects rather than confuses the public – it has to be understood by the insureds and those it covers. And for a claims process to work, especially one with multiple policies and maybe multiple carriers and maybe a number of exclusions, contingencies and caveats, there has to be transparency in the claims process – or at least a process.

In the world of insurance, education and training, and clear understanding of parameters of coverage and how to process claims, are a given. The Commission should make them a given for Lyft, too.

**6. The Commission should reject Lyft’s evasiveness in providing information and answering questions about the insurance it proposes and the education and training of its drivers on insurance and claims handling.**

Throughout the application process, Lyft has been evasive in explaining the insurance it proposes and the education and training of its drivers (and its passengers) on insurance and claims issues. It produced its insurance policies only on the day of the hearing, hardly sufficient time for proper review and questioning. Its answers to other interrogatories and discovery requests came late in the proceedings, even after its witness had testified. It produced nothing on the education and training of its drivers on insurance and claims handling. Its principal witness on insurance issues conceded he isn’t the one involved with insurance. And its witness who knew something about insurance was offered only at the very end as rebuttal on a narrow point.

Lyft isn't trying to satisfy the Commission's requisites of insurance coverage and consumer protection – it is trying to evade them.

For all its promises of innovation, for all its talk of a partnership with its drivers, and for all its professed devotion to its passenger, Lyft – at least in these applications – has done just the opposite. It has blocked and obscured any reasonable investigation of its proposed insurance coverage, and it has been unresponsive and vague in explaining its education and training of its drivers and passengers.

It argues the Commission doesn't usually delve into this. Maybe not. But the Commission has never been presented with this type of service, either. Lyft could have easily answered the concerns of insurance coverage, and proper education and training of its drivers, that have been prominent in these proceedings and in the Commission's handling of its ETA application: None of those concerns should come as a surprise to Lyft, as these issues are being raised across the country.

Lyft deliberately decided to do just the opposite: It has produced as little as possible, been as unresponsive as possible, and been as untimely as possible to questions about its insurance and its education and training of its drivers; it has approached any questions in this area with a haughty smugness that has thwarted any meaningful inquiry into whether these applications are ready for Pennsylvania consumers.

The Commission should send a clear message that such evasiveness will not be tolerated, much less rewarded.

**7. Conclusion – There is need for verification on all aspects of Lyft’s insurance, and a need for Lyft’s insurer to come forward.**

Lyft suggests the Commission need not worry – that Lyft’s insurer will file a Form E certifying it is providing Lyft with all the needed insurance, along with a Form F that its insurance will match with whatever the law ultimately is regardless of the language in the policies.

That is woefully inadequate. If ever the Commission should approach an application with a “trust but verify” stance, this is it. Lyft doesn’t understand some of the contingencies and caveats in its own policies, much less how they intersect with its contingencies and caveats in its other agreements with its drivers and possibly with its passengers. And to say it will adjust its policies to cover whatever the law requires begs the question of what the law requires. Granted, it may be impossible to anticipate and answer every scenario. But the purpose of an insurance policy is to answer – in advance, not after a protracted legal process – the parameters of coverage. Lyft has resisted this.

Lyft’s own conduct should put the Commission’s emphasis on verification over trust. It claims it is complying with the Commission’s ETA Order – its insurer filed a Form E as “proof”. But it cavalierly admits it is providing only contingent coverage in Stage 1 and is not requiring its drivers to notify their insureds, much less get documentation of that.

The Commission should be wary of Lyft doing the same in this permanent application. It should require that Lyft be open about its insurance coverage, with its drivers, with the public and with the Commission – and the Commission should establish ongoing monitoring of that. An order is only as effective as the compliance with it, and Lyft’s conduct under the ETA raises serious concerns.

Further, the Commission should require that Lyft bring in its insurer to answer questions. Lyft’s relation with its insurer – a surplus lines carrier and therefore without any Guaranty Fund protection if it goes under – is highly unusual: It found an insurer willing to take on unique risks without doing any background check on the drivers or cars it insures. And it found an insurer willing to have claims filtered through (and maybe handled by) Lyft, even though it is purportedly the one responsible.

Lyft may not want scrutiny of such lax insurance. But the Commission should, and should require much more than a cursory form letter of certification from Lyft’s insurer – it should require submission of the policies themselves, and it should conduct a thorough review and questioning of the policies and the insurer.

The innovation Lyft offers comes with risks – such is true for all innovations. The Commission should do all it can to ensure the public’s protection as well as its benefit before this innovation enters Pennsylvania. So far, Lyft’s applications are heavy on the

benefit but inexcusably light on the protection. Until that is corrected, the Commission should reject them.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sam Marshall".

Samuel R. Marshall (PA ID No. 33619)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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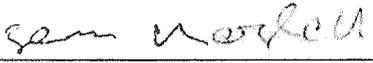
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Dated this 15th day of September, 2014, in Philadelphia, Pennsylvania