BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County	:	A-2014-2415045
Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania	:	A-2014-2415047

PROTESTANTS' JOINT BRIEF

Protestants, Concord Limousine, Inc., and Executive Transportation Company, Inc. ("Limousine Protestants" (both matters)), and Protestants, Aceone Trans Co., AF Taxi, Inc. AG Taxi, Inc. AGB Trans, Inc., Almar Taxi, Inc. ATS Cab, Inc, BAG Trans, Inc., BNG Cab Co., BNA Cab Co., BNJ Cab, Inc., Bond Taxi, Inc., BSP Trans, Inc., Double A Cab Co., FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc. GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., Jaydan, Inc. LAN Trans, Inc., LMB Taxi, Inc. MAF Trans, Inc., MDS Cab, Inc., MG Trans Co., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., Rosemont Taxicab Co., Inc., S&S Taxi Cab, Inc., SAJ Trans, Inc., Saba Trans, Inc., SF

Taxi, Inc., Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., VAL Trans, Inc., VB Trans, Inc., and VSM Trans, Inc. ("Medallion Taxicab Protestants" (Pennsylvania application only)) and Protestants, BM Enterprises, Inc., t/a A.G. Taxi, Bucks County Services, Inc., Dee Dee Cab Company, Germantown Cab Company, Ronald Cab, Inc., t/a Community Cab, Shawn Cab, Inc., t/a Delaware County Cab and Sawink, Inc., t/a County Cab ("Non-medallion Taxicab Protestants" (Pennsylvania application only)), hereby submit their Joint Brief in the above matters.

I. INTRODUCTION

Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, requires every public utility, including every motor carrier, to obtain a certificate of public convenience prior to beginning service.[1] The Commission has the power to grant an application for a certificate of public convenience to provide "motor carrier" service only if the applicant meets the definitions of

[1] 66 Pa. C.S. §1101 states: "Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied."

"public utility,"[2] "common carrier,"[3] and "motor carrier"[4] that have been adopted by the General Assembly in Section 102 of the Public Utility Code, 66 Pa. C.S. §102. In accordance with these definitions, a "motor carrier" owns and operates motor vehicles and equipment to transport passengers and property for compensation.

This matter involves two applications filed by Lyft, Inc. ("Applicant"), a "**transportation network company**" ("TNC"), for authorization to operate as a "**motor carrier**" to provide "**experimental service**" through a "**ridesharing** network." Contrary to its proposal to

[2] 66 Pa. C.S. §102 defines the term "public utility", in pertinent part, as follows:

> (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
> …
> (iii) Transporting passengers or property as a common carrier.

[3] 66 Pa. C.S. §102 defines the term "common carrier" as follows: "Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, but shall not include contract carriers by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis."

[4] 66 Pa. C.S. §102 defines the term "motor carrier" as follows: "A common carrier by motor vehicle, and a contract carrier by motor vehicle."

operate as a “motor carrier”, the Applicant does not propose to own or operate any motor vehicles nor does it propose to transport any passengers or property. Rather, the Applicant proposes to facilitate for-hire transportation by private individuals, who do not have certificates of public convenience, through a commercial ridesharing network using its smartphone application. Accordingly, the Applicant does not meet the definition of “public utility” or “common carrier” or “motor carrier” contained in Section 102 of the Public Utility Code, 66 Pa. C.S. §102.

On this basis alone, the Commission must deny the application. The Commission simply lacks the power to grant the present application, just as it lacks the power to grant an application for a certificate of public convenience to operate a fast food restaurant. The proposed service in both instances falls outside of the scope of the Commission’s jurisdiction and powers.

This is not to say that all aspects of the proposed service are outside the scope the Commission’s jurisdiction and powers. On the contrary, one of the Commission’s primary functions is to enforce statutes and regulations that prohibit the unauthorized provision of public utility service, including the unauthorized provision of motor carrier service. And the proposed service clearly contemplates the facilitation of such unauthorized service.

Private individuals may not transport persons for hire without first obtaining a certificate of public convenience from the Commission, even if that transportation is arranged using the latest technology. 66 Pa. C.S. §1101. Furthermore, commercial ridesharing is prohibited under the Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9. There are no exceptions to these prohibitions under existing law. And it is doubtful that the General Assembly could craft a revision to existing law so as to permit unauthorized individuals to provide for-hire transportation service without significantly undermining public safety.

The Applicant views itself as a visionary, who will transform the for-hire transportation industry for the greater good of mankind. It believes it has invented a unique business model, never before contemplated, to which existing regulatory schemes do not apply. It characterizes the Commission and existing motor carrier service as antiquated and resistant to change and innovation and they have mounted a successful publicity and lobbying campaign to mobilize public opinion and political support for immediate legislative action to legitimize the Applicant's "business model."

These efforts have also been successful in convincing the Commission to give special treatment and consideration to these Applications, even though it is clear that legislative changes are necessary before the

Commission may act to approve the Applications. The Commission placed the present Applications on an expedited hearing and briefing schedule that has imposed enormously unfair burdens on the Protestants, in terms of time and expense. Protestants have not been afforded adequate time to conduct adequate discovery or to prepare an adequate case in opposition to the Applications nor have they been given adequate time to digest and analyze the voluminous record in a careful and comprehensive manner so that they may advocate effectively on their own behalf.

Given the significant impact a decision in this matter will have on the future of motor carrier regulation and on Protestants' businesses, the Commission's rush to judgment seems particularly unfair and inappropriate. In addition, public interest and safety demands careful consideration of the issues presented by innovations in communications technology before the Commission grants authorization for these technologies to be used in a manner that so fundamentally challenges the existing regulatory scheme. Furthermore, the Commission may not, and should not, usurp the General Assembly's exclusive power to formulate and adopt regulatory policies, especially while the legislature is in process of considering these very issues.

Ironically, the Applicant does not even view these proceedings as important or as necessary as the Commission does. It views the proposed

service as an activity that is not prohibited by the Public Utility Code and therefore not subject to Commission regulation, even though, for "business reasons," it has decided to proceed in this forum. Perhaps, this is because the Applicant believes the Commission will bow to public and political pressure, ignore the rule of law, and exercise powers it does not have by granting the Applications.

In any event, the Applicant's attitude does not bode well for its future compliance with Commission orders and regulations. The Applicant has demonstrated what one Commission has characterized as a "contumacious refusal to obey Commission orders." The Applicant does not obey Commission orders because it does not believe it is subject to Commission regulation and has made a calculated decision that the perceived public benefits of its service will cow a regulatory agency reluctant to face public criticism that it is standing in the way of progress. This "business model" has worked in other jurisdictions and the Applicant is banking on the fact that it will work in this instance as well.

The Applicant is counting on the Commission to ignore its violation of the cease and desist order and proceed to grant the Applications. But the Applicant's conduct reflects a clear propensity to operate illegally that warrants denial of the Applications. The Applicant has only acted in its own

self-interest, without regard for the rule of law or those charged with enforcing it. And it will continue to do so for what it calls "business reasons." Its decision to participate in these proceedings was a "business decision" and does not reflect a respect for the Commission's authority or the rule of law. The Applicant views the outcome of these proceedings as irrelevant. Protestants predict that the Applicant will continue to operate even if the Commission denies the Applications and further predict that, if the Commission grants the Applications, the Applicant will pick and choose what orders and regulations of the Commission it will obey, when "business reasons" dictate that compliance is not in its best interest.

Finally, contrary to the Applicant's claims, the proposed service is neither "new" nor "innovative." The technology that the Applicant is now using illegally, in defiance of the Commission's order, and which it proposes to use, if authorized, is already in use by existing certified carriers to provide lawful authorized service. The only thing "experimental" about Applicant's proposed service is the use of uncertified motor carriers to provide transportation service. Such service is outlawed for a reason; it presents a number of dangers to public safety as will be discussed below to the best of Protestants ability given the unreasonable time constraints that have been imposed upon them.

Notwithstanding the fact that the General Assembly has not yet empowered it to grant the Applications in this matter, the Commission should not experiment with public safety and should deny the Applications on the merits. The Applicant failed in meeting its burden of proof with regard to the criteria utilized by the Commission in evaluating and granting motor carrier applications. See 52 Pa. Code §41.14. In particular, the Applicant failed to meet its burden of proving public need for the proposed service, particularly in the City of Philadelphia and the surrounding suburban counties of Bucks, Chester, Delaware, and Montgomery. In addition, Applicant's projected income and expenses, without more, are inadequate to support a conclusion that it is financially fit to provide the proposed service. Lastly, the Applicant has not demonstrated that it has the technical and operation fitness to provide safe, adequate service, especially with regard to the maintenance of adequate vehicle safety standards and adequate insurance coverage to protect members of the riding public who may sustain injuries while using the proposed service.

I. PARTIAL SUMMARY OF WITNESS TESTIMONY

Due to the unreasonable time constraints imposed on the parties in this proceeding, Protestants were unable to provide a complete summary of witness testimony in this matter. A partial summary follows:

Mr. Opaku testified that his is the Director of Public Policy for Lyft. NT 290. He stated that Lyft has a Director of Operations based San Francisco who is responsible for operations in Pennsylvania. NT 290. Lyft has no offices in Pennsylvania. NT 291. He stated that there is a person responsible for operations in Pennsylvania, but he did not now that person's name. NT 291.

Mr. Opaku does not consider Lyft to be a transportation company. NT 294. It does not provide any transportation service directly. NT 294. It does not provide transportation service indirectly. NT 294. It only provides a platform for people who are willing to offer rides in their cars to offer them to people who are in need of rides. NT 294. The only thing Lyft provides is the platform. NT 294. Lyft does not own vehicles. NT 294. Lyft does not employ drivers. NT. 294. Lyft does not own or operate any vehicles, equipment, or facilities to transport passengers or property as a common carrier. NT 295. Lyft does not sell or offer for sale any transportation service. NT 295. Lyft does not furnish transportation service. NT 295. Lyft does not negotiate with carriers to provide transportation service. NT 295. Lyft never assumes custody of any vehicle or equipment used to provide transportation service. NT 296. Lyft facilitates ridesharing arrangements. NT 296.

Requests for service using the Lyft application are for on-demand service. NT 299. The Lyft application is not capable of making advance reservations. NT 299.

Lyft used its application to facilitate ridesharing when it did not have a certificate of public convenience. NT 306. Lyft does not believe that Pennsylvania law applies to the use of its application to facilitate ridesharing arrangements. NT 306. When asked why Lyft filed an application with the Commission if it does not believe it is subject to regulation, Mr. Opaku replied that Lyft is not afraid or regulation. NT 306.

If the applications are denied, Lyft does not know if it will stop operating in Pennsylvania. 307.

Lyft continued to operate after the Commission filed a complaint against it. NT 308. Lyft continued to operate after the Commission ordered it to stop operating. NT 309. When asked how the Commission should view its failure to comply with the cease and desist order, Mr. Opaku stated that once the case is decided it will be shown that the Commission should not have issued the order. NT 310.

LEGAL ARGUMENT

I. THE GENERAL ASSEMBLY HAS NOT EMPOWERED THE COMMISSION TO GRANT A CERTIFICATE OF PUBLIC CONVENIENCE TO A TRANSPORTATION NETWORK COMPANY

It is a well-established principle of administrative law that the powers of an administrative agency are not boundless. *See West Penn Railways Company v. Pennsylvania Public Utility Commission*, 4 A.2d 545 (Pa. Super. 1939). As creatures of statute, administrative agencies may only exercise those powers that have been conferred upon them by the General Assembly in their enabling acts. *See Susquehanna Regional Airport Authority v. Pennsylvania Public Utility Commission*, 911 A.2d 612 (Pa. Cmnwlth. 2006). Administrative agencies have no inherent power and may do only those things that the legislature has expressly or by necessary implication placed within their power to do. *Naylor v. Township of Hellam*, 773 A.2d 770, 773-773 (Pa. 2001). An administrative agency "cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant: *it is the law which is to govern rather than departmental opinions in regard to it.*" *Commonwealth v. American Ice Company*, 178 A.2d 768, 773 (Pa. 1962) (quoting *Federal Deposit Insurance Corp. v. Board of Finance & Revenue of Commonwealth*, 84 A.2d 495, 499 (Pa. 1951) (emphasis in the original).

Unlike the legislatures in other states, the Pennsylvania General Assembly has not empowered either of Pennsylvania's public utility commissions to grant certificates of public convenience authorizing the

operation of transportation network companies ("TNC's), nor has it empowered them to promulgate regulations to redefine or expand the term "public utility."[5] Neither the Public Utility Code, 66 Pa. C.S. §§101-3316, nor the Parking Authorities Law, 53 Pa. C.S. §§5501-5517 and §§5701-5745, contain any provisions granting such power. The scope of the Commission's regulatory power is limited to public utilities as defined by the General Assembly in Section 102 of the Public Utility Code, 66 Pa. C.S. §102. It defines the term "public utility" as follows:

> (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
>
> …
>
> (iii) Transporting passengers or property as a common carrier.

Accordingly, since TNC's are not within the scope of the definition of "public utility", TNC's are not within the regulatory jurisdiction of the Commission. The Commission is therefore not empowered to entertain an

[5] The California Public Utilities Commission has promulgated a regulation defining a "transportation network company" ("TNC") as "a company that uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles." Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, California Public Utilities Commission, Rulemaking 12-12-11 (Filed December 20, 2012) (copy attached). But the Commission does not have the power to expand its jurisdiction in this fashion.

application for authorization to operate a TNC, which is not what has been submitted to the Commission for consideration in the present proceeding.

Obviously, the Applicant realizes that the Commission is not empowered to grant a TNC certificate and has, therefore, styled its Applications as applications for authorization to provide **motor carrier service**. But the Applicant is, in reality a TNC, not a motor carrier, and its attempt to overcome the Commission's lack of statutory authority to give it what it wants by styling its Applications as something they are not is like trying to fit a square peg in a round hole. It does not fit.

II. THE COMMISSION DOES NOT HAVE THE POWER TO GRANT THE APPLICATIONS BECAUSE THE APPLICANT, BY ITS OWN ADMISSION, IS NOT A MOTOR CARRER.

The transportation of passengers or property as a common carrier is clearly within the General Assembly's definition of the term "public utility" and therefore the Commission has the power to entertain an application for authorization to operate as a "common carrier", including authorization to operate as a "motor carrier" as these terms are defined by the General Assembly. But the Commission is not empowered to grant an application filed by an entity that does not meet the General Assembly's definition of "common carrier." And by the Applicant's own admission it is not a

transportation company and does not provide any transportation service. Accordingly, the Commission may not grant the Applications.

The Public Utility Code defines the term "motor carrier" as "[a] common carrier by motor vehicle, and a contract carrier by motor vehicle." 66 Pa. C.S. §102. The Public Utility Code defines the term "common carrier" as follows:

> Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, ***but shall not include*** contract carriers by motor vehicles, or ***brokers***, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.
>
> 66 Pa. C.S. §102 (emphasis added).

In order to determine whether the Applicant meets the Public Utility Code's definition of "motor carrier," the Commission should rely on the Applicant's own words. By its own admission, the Applicant is not a "motor carrier" within the meaning of the Public Utility Code because it does not transport passengers. Accordingly, the Commission may not approve the Applications.

III. NOTWITHSTANDING THE APPLICANT'S OWN ADMISSION, THE COMMISSION DOES NOT HAVE THE POWER TO GRANT THE

APPLICATIONS SEEKING AUTHORIZATION TO PROVIDE MOTOR CARRIER SERVICE BECAUSE THE APPLICANT PROPOSES TO FUNCTION AS A BROKER, WHICH IS EXCLUDED FROM THE DEFINTION OF COMMON CARRIER.

Even if the Applicant were not denying that it is a transportation company and that it does not provide transportation service, it still would not meet the definition of "motor carrier" within the meaning of the Public Utility Code because it meets the definition of "broker" within the meaning of Section 2501 of the Public Utility Code, 66 Pa. C.S. §2501, which is explicitly excluded from the definition of "motor carrier." Section 2501 defines the term "broker" as follows:

> Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.
>
> 66 Pa. C.S. §2501

In its application, the Applicant indicates that it will use its mobile software application to facilitate ridesharing arrangements between

prospective passengers and private individuals using their own vehicles, who will provide the actual transportation service; the Applicant does not propose to provide transportation service itself. Based on the foregoing, Applicant proposes to function as a "broker" within the meaning of 66 Pa. C.S. §2502 and not as a "motor carrier" within the meaning of 66 Pa. C.S. §102. Accordingly, the application should be denied because the Commission may not authorize a person or corporation to provide motor carrier service where the person or corporation only proposes to procure such service on behalf of third parties, but does not propose to provide such service itself, either directly or indirectly.

IV. EVEN IF THE APPLICANT AMENDS ITS APPLICATION TO SEEK AUTHORIZATION TO ACT AS A BROKER OF MOTOR CARRIER SERVICE, THE COMMISSION DOES NOT HAVE THE POWER TO GRANT AUTHORIZATION TO A MOTOR CARRIER OR A BROKER THAT PROPOSES TO FACILITATE THE PROVISION OF TRANSPORTATION SERVICE BY UNCERTIFIED CARRIERS OR TO FACILITATE ILLEGAL COMMERCIAL RIDESHARING

Commission regulations prohibit a broker to "employ or engage a carrier who or which is unable to lawfully provide the transportation under his contracts, agreements, or arrangements therefor." 52 Pa. Code §39.5 (pertaining to carrier's operating authority). In other words, a broker cannot procure transportation services from an individual or entity that does not

have a certificate of public convenience authorizing the type of transportation that is being requested. This makes sense because a motor carrier must first obtain a certificate of public convenience before beginning service. 66 Pa. C.S. §1101. Accordingly, a broker should not be able to procure a service that an individual or entity may not provide directly.

Furthermore, the Application proposes to facilitate commercial ridesharing, which is illegal in Pennsylvania. The Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9, defines the term "ridesharing arrangement" as follows:

> As used in this act, "RIDESHARING ARRANGEMENT" shall mean any one of the following forms of transportation:
>
> (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver ***who is not engaged in transportation as a business.*** The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
> (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

Individuals or entities that provide transportation services under a ridesharing arrangement are not subject to motor carrier laws and are not

considered commercial vehicles. 66 P.S. §695.2 and §695.99. But a transportation provider that receives compensation for its services is no longer doing so pursuant to a "ridesharing arrangement" and must first obtain a certificate of public convenience prior to beginning service. 66 Pa. C.S.. §1101 and 53 Pa. C.S. §§ 5714 and 5741.

Accordingly, the application should be denied, whether it amended or not, because it is illegal to provide directly, or to facilitate, commercial transportation services pursuant to ridesharing arrangements that will be provided by individuals or entities that do not possess certificates of public convenience. Individuals who provide transportation service are subject to the provisions of the Public Utility Code and must first obtain a certificate of public convenience before beginning to provide the proposed service. 66 Pa. C.S. §1101. Based on the foregoing, the Commission may not approve the Application as it seeks to facilitate the provision of illegal transportation service with uncertified carriers.

V. THE COMMISSION DOES NOT HAVE THE POWER TO GRANT THE PRESENT APPLICATION FOR EXPERIMENTAL SERVICE BECAUSE THE PROPOSED SERVICE DOES NOT DIFFER IN ANY MEANINGFUL WAY FROM CALL OR DEMAND AND LIMOUSINE SERVICE

Commission has adopted a scheme of classification for service provided by common carriers of passengers, including "experimental service", under 52 Pa. Code §29.13, which states:

> The following standard classification of types of service furnished by common carriers of passengers is adopted, and the following is hereby recognized as a standard class of common carrier service. The rights and conditions pertaining to a standard class of service are specified in Subchapter D (relating to supplemental regulations). A certificated service which does not completely correspond to a standard class may be governed, where practicable, by the regulations for the standard class to which it most nearly corresponds:
>
> (1) *Scheduled route service.* Common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, wherein the vehicles delivering the service operate according to schedules along designated routes.
> (2) *Call or demand service.* Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.
> (3) *Group and party service.* Common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a nonexclusive basis for tour or sightseeing service and special excursion service.
> (4) *Limousine service.* Local, nonscheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance.
> (5) *Airport transfer service.* Common carrier service for passengers rendered on a nonexclusive basis which originates or terminates at an airport.

> (6) *Other services: paratransit, experimental.* Common carrier service for passengers which differs from service as described in any one of the five classes set forth in paragraphs (1)—(5) and is provided in a manner described in the certificate of public convenience of the carrier and is subject to restrictions and regulations are stated in the certificate of the carrier or in this chapter.

In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service. 52 Pa. Code §29.352.

Notwithstanding the fact that the application is, for all intents and purposes, requesting authorization to act as a "broker", so that the Applicant may facilitate illegal ridesharing arrangements between prospective passengers and private individuals, without certificates, using their own vehicles, the actual service that will be provided by these individuals in not "experimental" within the meaning of 52 Pa. Code §29.13 because it does not differ, in any significant way, from "call or demand service" or "limousine service", as defined under the Commission's classification scheme for motor carriers.

As noted above, "experimental service" is defined negatively, as a service that *differs* from "scheduled route service", "call or demand service",

"group and party service", "limousine service" and "airport transfer service." But nothing about the proposed service distinguishes it, in any meaningful way, from the service provided by other motor carriers under the Commission's scheme of classification for such services. As described in the application, the proposed service appears to offer on-demand transportation service, despite the use of mobile electronic devices to communicate such requests. Such service is "call or demand" service within the meaning of the Commission's classification scheme for motor carrier service.

The only thing new or experimental about Applicant's proposed service that distinguishes its service from other motor carrier services is the proposal to use uncertified drivers to facilitate illegal ridesharing. But this is not new, innovative or experimental, it is just illegal. The Commission did not adopt a classification for experimental service as an exception capable of swallowing the rest of its regulatory scheme governing motor carrier service. The Commission intended that experimental service would be governed by the same rules and regulations that govern other motor carrier service, at least with respect to vehicle safety and equipment standards, driver eligibility standards, and insurance requirements. Experimentation does not

permit the Commission to exceed the bounds of its statutory authority or to grant authorization to provide service that is otherwise illegal.

What the Applicant proposes here is not a new, experimental service, but the resurrection of an old problem: illegal hack service provided by gypsy cabs. One of the primary aims of taxicab regulation in this Commonwealth has been the elimination of such unauthorized service, which, until recently, was uniformly viewed as a threat to public safety. The only thing new or innovative about the proposed service in this case is the fact that a multi-billion dollar corporation is facilitating the provision of illegal gypsy cab service by making them harder to detect and easier for them to break the law.

Based on the foregoing, the application should be denied because the proposed service does not differ, in any meaningful way, from other motor carrier services and, therefore, does not fall within the definition of "experimental service" under 52 Pa. Code §29.13.

VI. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMMISSION IS EMPOWERED TO GRANT THE APPLICATIONS, THE APPLICANT HAS FAILED TO MEET ITS BURDEN OF PROOF WITH REGARD TO STATEWIDE PUBLIC NEED

Section 1103(a) of the Public Utility Code, 66 Pa. C.S. §1103(a), provides that an application for a certificate of public convenience should be

granted only if the Commission finds that "the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." The applicant must also satisfy the specific requirements the PUC has promulgated in its regulations under 52 Pa.Code §41.14, which provides:

> (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
>
> (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:
>
> (1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
>
> (2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.
>
> (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.
>
> (4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under § § 29.331—29.335 (relating to limousine service).

The applicant must prove by a preponderance of the evidence that the requirements of Section 1103(a) and Section 41.14 are met. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602-03 (Pa. Cmwlth. 1990). "[A] public demand/need for an applicant's proposed transportation service may be proven through witnesses comprising a representative sampling of the public that will use the applicant's proposed service within the territory encompassed by the application.'" *Ace Moving & Storage v. Pennsylvania Public Utility Commission*, 935 A.2d 75, 78 (Cmnwlth. Ct. 2007). In proving a public need for the services, the "witnesses must be legally competent and credible; their testimony must be probative and relevant to the application, and they

must articulate a demand/need for the type of service embodied in the application." *Yellow Cab Company of Pittsburgh v. Pennsylvania Public Utility Commission*, 673 A.2d 1015, 1018 (Pa. Cmwlth. 1996).

What may constitute "need" for service depends on the locality involved and the particular circumstances of each case. *Warminster Township Municipal Authority v. Pennsylvania Public Utility Commission*, 138 A.2d 240 (Pa. Super. 1958). An applicant need not establish a present demand for service in every square mile of the territory to be certificated; proof of necessity within the general area is sufficient. *Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission*, 512 A.2d 1359 (Cmnwlth. Ct. 1986).

The Commission has established certain evidentiary guidelines for the establishment of public need under 52 Pa. Code §3.382, which provides:

> (a) *Service request evidence.* Evidence of requests received by an applicant for passenger or household goods in use service may be offered by the applicant in a transportation application proceeding relevant to the existence of public necessity for the proposed service. The credibility and demeanor of a witness offering evidence will be considered in evaluating the evidence. The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by evidence such as the following:
> (1) The date of each request.
> (2) The name, address and phone number of the person or company requesting service.

(3) The nature of the service requested on each occasion, including the commodities or persons to be transported, and the origin and destination of the requested transportation.
(4) The disposition of the request, that is, whether the applicant provided the service or, if not, whether the requesting shipper was referred to another carrier and, if there was a referral, to which carrier was the shipper referred.

In the present case, the Applicant did not present any request evidence and relied solely on the testimony of public witnesses. The evidence of public need in this matter is thin to non-existent and limited to users in Allegheny County only, which was provided illegally. Certainly, there is no evidence of public need that supports the granting of statewide authority or any authority outside of Allegheny County.

The absence of sufficient public need testimony is puzzling given the grandiose claims from the Applicant's vast public relations campaign regarding the need for its services. If these claims were true, one would have expected the hearing room to be flooded with potential users of the proposed service eager to extol its virtues. The actual turnout is not reflective of a broad based statewide demand for the proposed service.

VII. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMMISSION IS EMPOWERED TO GRANT THE APPLICATIONS, THE APPLICANT HAS FAILED TO MEET ITS BURDEN OF PROOF WITH REGARD TO FINANCIAL FITNESS

Evidence of financial fitness in the record is non-existent.

VIII. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMMISSION IS EMPOWERED TO GRANT THE APPLICATIONS, THE APPLICANT HAS FAILED TO MEET ITS BURDEN OF PROOF WITH REGARD TO TECHNICAL FITNESS

There was no testimony presented regarding the experience or qualifications of any of the Applicant's employees concerning their technical fitness. In fact, the testimony indicated that the Applicant does not have any employees and no offices in Pennsylvania.

IX. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMMISSION IS EMPOWERED TO GRANT THE APPLICATIONS, THE APPLICANT HAS FAILED TO MEET ITS BURDEN OF PROOF WITH REGARD TO ITS PROPENSITY TO OPERATE LEGALLY

Perhaps the most disturbing aspect of the Applicant's case concerns its operational fitness from the perspective of its propensity to operate legally. Lyft operated in violation of the Commission's cease and desist order without a reasonable explanation. It believe it will be vindicated when a final determination has been made; however it took no steps to appeal the cease and desist order to seek supersedeas.

X. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMMISSION IS EMPOWERED TO GRANT THE APPLICATIONS, THE APPLICATIONS SHOULD BE DENIED BECAUSE THEY ARE NOT IN THE PUBLIC INTEREST

Commission has adopted certain regulations regarding direct control and supervision by motor carrier certificates that apply to all classes of motor carrier service, including experimental service. These regulations require a certificate holder to own or lease any vehicle used to provide authorized service and to exercise direct control and supervision over the vehicle. 52 Pa. Code §29.101(a)(5) and (f)(2)(i). The Applicant does not propose to own or lease any of the vehicles that will be used to provide the proposed service.

Direct control and supervision by a certificate holder also includes the duty to inspect the vehicle and equipment that will be used to provide the authorized service prior to taking possession of it and to certify that it is in a safe condition for operation on the highway. The Applicant proposes to rely on the annual inspection conducted by the Pennsylvania Department of Transportation and does not propose to conduct any vehicle inspections itself.

Direct control and supervision by a certificate holder also includes the duty to ensure that the vehicles are operated by drivers qualified under Subchapter F of Chapter 29 of the Commission's regulations. 52 Pa. Code §29.101(a)(2). The Applicant proposes to conduct criminal background

checks, at least on an initial basis, but did not provide testimony regarding follow-up checks.

Direct control and supervision by a certificate holder also includes the duty to furnish and maintain adequate service to the public which shall be reasonably continuous and without unreasonable interruptions and delays. 52 Pa. Code §29.101(f)(2)(iii). Direct control and supervision by the certificate holder also includes the duty to enter into a proper lease agreement with the driver of any vehicle that will be used to provide authorized service. 52 Pa. Code §29.101(a)(5) and (f). Certificate holders are prohibited from leasing, contracting with, or making an arrangement with an employee-driver under which the certificate holder is given custody or possession or use of a vehicle owned or leased by the employee-driver or his nominee. 52 Pa. Code §29.101(f)(1).

Although it did not provide any testimony regarding its proposed leasing arrangement with drivers, the application proposes that private vehicle owners will provide the authorized service by driving their own vehicles, which will be leased to the applicant on a temporary basis only during the time when service is being provided. Under the proposed leasing arrangement, the owner-driver is the lessor and the Applicant is the lessee, but possession will never pass from the owner-driver to the Applicant.

Presumably, under the proposed leasing arrangement, the vehicle owners are under no obligation to use Applicant's mobile application to provide authorized service and are free to use their own vehicles wherever and whenever they want for their own purposes. The application does not propose that the Applicant will lease back the vehicles to the owner-drivers who will be providing the authorized service. The proposed temporary leasing arrangement is not in the public interest for several reasons.

First, the proposed temporary leasing arrangement is not in the public interest because the Applicant will not be able to exercise direct control and supervision over the vehicles. Under the proposed leasing arrangement, the Applicant never takes possession and control of the vehicle when the owner-driver engages the Applicant's mobile telephone application. Accordingly, it is not possible for the Applicant to conduct safety inspections in compliance with the Authority's regulations because it never takes possession of the leased vehicle.

Furthermore, the proposed leasing arrangement is not in the public interest because it violates Commission regulations that prohibit a certificate holder from leasing a vehicle from a driver or his nominee. The proposed leasing arrangement is not in the public interest because the Applicant will not be the lessor of the vehicle. Moreover, the proposed leasing

arrangement is not in the public interest because the Applicant has no way of ensuring that it provides continuous service without unreasonable interruption or delay. Applicant does not control or supervise the operation of the leased vehicle by the owner-drivers who are under no obligation to provide any service at all.

Furthermore, the proposed leasing arrangement is not in the public interest with respect to insurance and registration of the leased vehicles. Presumably, the leased vehicles title, registration and possession of the leased vehicles would remain with the owner-driver. Registration of the leased vehicle as a private passenger vehicle by the owner-driver violates Commission regulations and the Vehicle Code because the vehicle is being used as a commercial vehicle for hire.

CONCLUSION

For all of the foregoing reasons, the Applications should be denied.

Respectfully submitted,

Michael S. Henry

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Date: September 15, 2014

CERTIFICATE OF SERVICE

I, Michael Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Brief to all parties on the Commission Service list.

Michael S. Henry

Michael S. Henry

Date: September 15, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County	:	A-2014-2415045
Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania	:	A-2014-2415047

PROPOSED FINDINGS OF FACT
PROPOSED CONCLUSIONS OF LAW
AND
PROPOSED ORDER

The above Protestants, by and through their attorney, Michael S. Henry, Esquire, hereby submit their Proposed Findings of Fact and Conclusions of Law in the above matters:

I. PROPOSED FINDINGS OF FACT

1. The Applicant is Lyft, Inc., a corporation of the State of Delaware, registered as a foreign business in Pennsylvania.

2. Applicant filed the instant applications in April, 2014.

3. One Application is for authorization to provide experimental service in Allegheny County and the other for authorization to provide experimental service throughout the Commonwealth, excluding certain counties.

4. Applicant also filed an Application for Emergency Temporary authority.

5. The Commission granted conditional approval of the application for emergency temporary authority.

6. Lyft has a Director of Operations based San Francisco who is responsible for operations in Pennsylvania. NT 290.

7. Lyft has no offices in Pennsylvania. NT 291.

8. Lyft does not consider itself to be a transportation company. NT 294.

9. Lyft does not provide any transportation service directly. NT 294.

10. Lyft not provide transportation service indirectly. NT 294.

11. Lyft only provides a platform for people who are willing to offer rides in their cars to offer them to people who are in need of rides. NT 294.

12. Lyft does not own vehicles. NT 294.

13. Lyft does not employ drivers. NT. 294.

14. Lyft does not own or operate any vehicles, equipment, or facilities to transport passengers or property as a common carrier. NT 295.

15. Lyft does not sell or offer for sale any transportation service. NT 295.

16. Lyft does not furnish transportation service. NT 295.

17. Lyft does not negotiate with carriers to provide transportation service. NT 295.

18. Lyft never assumes custody of any vehicle or equipment used to provide transportation service. NT 296.

19. Lyft facilitates ridesharing arrangements. NT 296.

20. Requests for service using the Lyft application are for on-demand service. NT 299.

21. The Lyft application is not capable of making advance reservations. NT 299.

22. Lyft used its application to facilitate ridesharing when it did not have a certificate of public convenience. NT 306.

23. Lyft does not believe that Pennsylvania law applies to the use of its application to facilitate ridesharing arrangements. NT 306.

24. If the applications are denied, Lyft does not know if it will stop operating in Pennsylvania. 307.

25. Lyft continued to operate after the Commission filed a complaint against it. NT 308.

26. Lyft continued to operate after the Commission ordered it to stop operating. NT 309.

27. Lyft did not present the testimony of any public witnesses.

28. Lyft did not present any evidence of public need in the City and County of Philadelphia or in the Counties of Bucks, Chester, Delaware, or Montgomery.

29. Lyft did not present any evidence of regarding its financial fitness.

30. The Applicant presented its proposed tariff.

31. Applicant does not propose to conduct physical inspections of vehicles and will rely on user feedback to enforce its vehicle standards.

32. Applicant also proposes to rely on the annual state inspection for private automobiles that is performed in connection with the annual registration renewal.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over "public utilities" as defined in Section 102 of the Public Utility Code, 66 Pa. C.S. §102.

2. The term "public utility" as defined by Section 102 of the Public Utility Code, 66 Pa. C.S. §102, includes an entity that owns or operates vehicles and equipment for the "transportation of passengers or property as a common carrier."

3. The term “common carrier” as defined under Section 102 of the Public Utility Code, 66 Pa. C.S. §102, includes the term “motor carrier” also defined thereunder.

4. The term “transportation network company” is not defined under Section 102 of the Public Utility Code, 66 Pa. C.S. §102, and the term “public utility” does not include entities that provide service as a “transportation network company.”

5. The Commission does not have the power or jurisdiction to entertain or consider an application for authorization to operate a “transportation network company.”

6. The Commission has jurisdiction over this matter because the Applications seek authorization to provide “experimental service,” which is a class of motor carrier service defined under 52 Pa. Code §29.13.

7. The term “experimental service” under 52 Pa. Code §29.13 only applies to “motor carriers” as that term is defined under 66 Pa. C.S. 102.

8. Accordingly, the Commission has the power to grant the Applications only if the Applicant falls within the scope of the definition of “motor carrier” under Section 102 of the Public Utility Code, 66 Pa. C.S. §102.

9. The Applicant does not fall within the scope of the term “motor carrier” under Section 102 of the Public Utility Code, 66 Pa. C.S. §102, because it

does not propose that it will own or operate any motor vehicles nor does it propose to transport persons or property as a motor carrier.

10. Accordingly, the Applications must be denied.

11. The Applications must also be denied because the proposed service involves drivers providing transportation as part of business and therefore is not exempt from regulation under the Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9, which exempts entities that provide transportation pursuant to "ridesharing arrangements" from regulation by the Commission.

12. The Applications must also be denied because they propose to facilitate transportation service by entities or individuals who have not first obtained a certificate of public convenience from the Commission, which violates 66 Pa. C.S. §1101.

13. In the alternative, the Applications must be denied because the Applicant failed to meet its burden of proof regarding its propensity to operate legally. 52 Pa. Code §41.14.

14. Applicant violated the Commission's cease and desist order when it continued to provide service after the cease and desist order was issued.

15. The Applicant failed to present sufficient evidence to sustain its burden of proof regarding public need for its services in the City and County of Philadelphia and the Counties of Bucks, Chester, Delaware and Montgomery.

16. The Applicant failed to present sufficient evidence to sustain its burden of proving financial fitness.

17. Applicant failed to present sufficient evidence to sustain its burden of proving that it can provide insurance coverage sufficient to meet the Commission's requirements.

18. The proposed tariff does not contain any detail concerning the rates Applicant proposes to charge or information that would enable anyone to calculate how its rates are to be applied in order to calculate a fare.

19. The Applicant failed to sustain its burden of proof with regard to operational fitness because it failed to present a proposed tariff sufficient to comply with the Commission's regulations.

20. The Applicant failed to sustain its burden of proof with regard to operational fitness because it failed to present testimony or evidence sufficient to establish its ability to comply with the Commission's regulations regarding vehicle inspections or its ability to exercise control and supervision over its drivers, vehicles and equipment.

III. PROPOSED ORDER

Upon consideration of the Applications and Protests submitted in this matter and the evidence and testimony presented at the hearings in these matters, IT IS

HEREBY ORDERED that the Applications are DENIED for the reasons set forth above.

WHEREFORE, the above Protestants respectfully request this Honorable Commission to adopt the foregoing proposed findings of fact and conclusions of law and proposed order.

Respectfully,

Michael S. Henry

Michael S. Henry