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September 15, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA FEDERAL EXPRESS

Re: Application of Lyft, Inc. (Experimental Service in Allegheny County); A-2014-2415045

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Main Brief of Lyft, Inc. in the above-captioned proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to Lyft, Inc.

/s/enc
Enclosure

c/c: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Administrative Law Judge Jeffrey A. Watson (via e-mail and First-Class Mail)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., a corporation of the State of : A-2014-2415045
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 :

MAIN BRIEF OF LYFT, INC.

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Dated: September 15, 2014

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I. INTRODUCTION

A. Procedural History

On April 3, 2014, Lyft, Inc. ("Lyft" or "Applicant") filed an Application at Docket Nos. A-2014-2415045 ("Application") requesting issuance of a certificate of Public Convenience to operate as a Transportation Network Company ("TNC") and offer experimental transportation network service between points in Allegheny County, Pennsylvania.¹

The Application was published in the *Pennsylvania Bulletin* on April 19, 2014, with Petitions to Intervene and Protests due on May 5, 2014. On May 5, 2014, Executive Transportation Co., Concord Limousine Co. ("Concord"), and Black Tie Limousine ("Black Tie") (collectively the "Eastern Pennsylvania Taxi Cab Carriers and Limousine Carriers" or "Eastern Pennsylvania Taxicabs"), JB Taxi LLC ("JB Taxi")², the Insurance Federation of Pennsylvania ("Insurance Federation"), and the Pennsylvania Association for Justice ("PAJ") (all jointly referenced as "Protestants") filed Protests.

Applicant filed Preliminary Objections to Protests on May 27, 2014. Between June 24 and June 27, 2014, Administrative Law Judges Mary D. Long and Jeffrey A. Watson issued Interim Orders and Initial Decisions addressing Applicant's Preliminary Objections. The Initial Decisions dismissed protests filed by the Insurance Federation, the PAJ, Concord Limousine, and Black Tie Limousine, leaving JB Taxi and the Eastern Pennsylvania Taxicabs as the remaining Protestants.³

¹ Also on April 3, 2014, Lyft filed a parallel Application requesting authority to offer experimental TNC service throughout the Commonwealth of Pennsylvania at Docket No. A-2014-2415047.

² Although Applicant addresses the substance of the argument set forth by JB Taxi throughout this Main Brief, Applicant primarily argues that JB Taxi's arguments should be disregarded because the carrier does not hold any operating authority in Allegheny County. *See JB Taxi Protest, see also Lyft Preliminary Objection to JB Taxi Protest*, p. 3.

³ Eastern Pennsylvania Taxicabs is a group of taxicab and limousine companies primarily based out of the Philadelphia area. With the dismissal of Protests filed by Concord and Black Tie, Executive Transportation is the sole remaining representative of the group with authority to protest this Application. *See Executive Transportation*

On July 3, 2014, the ALJs distributed a Notice of Prehearing Conference. The Notice directed parties to participate in a telephonic Prehearing Conference to be held on July 24, 2014. The ALJs subsequently served parties with a Prehearing Conference Order on July 7, 2014, which directed parties to prepare Prehearing Conference Memoranda for submission to the ALJs on or before July 23, 2014.

On July 17, 2014, the Insurance Federation filed Exceptions to the June 27, 2014, Initial Decision dismissing their Protest. Lyft filed Reply Exceptions on July 28, 2014.

On July 23, 2014, Lyft submitted a Prehearing Conference Memorandum, in which the Applicant notified parties that it would be modifying provisions of the Application filed on April 3, 2014 to incorporate provisions in the Petition for Emergency Temporary Authority ("ETA") filed with the Commission on July 16, 2014, at Docket No. A-2014-2432304.⁴ Lyft further received Prehearing Conference Memoranda from the Executive Transportation and JB Taxi. ALJs Long and Watson presided over the Prehearing Conference on July 24, 2014, and developed a tentative litigation schedule, with hearings preliminarily scheduled for August 7-8, 2014.

On July 31, 2014, ALJs Long and Watson issued an Interim Order directing Applicant to provide information regarding rides offered in Pennsylvania in conjunction with Applicant's mobile software application or "platform."

On August 14, 2014, the Commission entered an Order denying the June 27, 2014, Initial Decision and affirming the Insurance Federation's standing to protest the Application.

Amended Protest, p. 3. Although Applicant responds to substantive arguments set forth by the Eastern Pennsylvania Taxicabs throughout this Main Brief, Applicant primarily requests that the ALJs and the Commission disregard all testimony from witnesses presented by the Eastern Pennsylvania Taxicabs at the August 27, 2014 and September 10, 2014 evidentiary hearings because none of the witnesses represent certificated carriers with authority to operate in Allegheny County. See Section F, *infra*.

⁴ The ETA Application was granted by an Order entered July 24, 2014 ("ETA Order").

At the ALJs' request, parties cancelled the hearings scheduled for August 7-8. Following numerous scheduling discussions, the ALJs issued a revised Hearing Notice scheduling hearings for August 27, 2014 and September 3, 2014.

ALJs Long and Watson presided over an initial hearing on August 27, 2014, where the Eastern Pennsylvania Taxicabs presented four witnesses.

Prior to the September 3, 2014 hearing, on August 29, 2014, Lyft filed a Petition for Protective Order seeking to protect the ride data requested by the July 31, 2014 Order and the Applicant's insurance policies. On September 2, 2014, ALJs Long and Watson issued an Interim Order on Motion for Protective Order ("1st Protective Order") partially granting and partially denying the Protective Order. Parties subsequently convened for the second hearing on September 3, 2014.⁵ Due to extended cross-examination of Lyft Witness Joseph Okpaku at the September 3, 2014 hearing, additional hearings were scheduled for September 10, 2014, for the presentation of the Insurance Federation Witness. Additionally, the ALJs extended the deadline for Main Briefs from September 12, 2014 to September 15, 2014.

ALJs Long and Watson convened a final hearing on September 10, 2014. Following presentation of the Insurance Federation Witness at the September 10 hearing, Lyft Witness Kate Sampson offered brief rebuttal testimony. Additionally, the ALJs issued an Interim Order on Temporary Protective Order ("2nd Protective Order") partially modifying the 1st Protective Order

⁵ At the September 3 hearing, Lyft Exhibit 1-B was entered into the record. Lyft Exhibit 1-B reflects both red-lined and clean versions of the Attachment A submitted with the original April 3 Application. Consistent with statements made in the Lyft Prehearing Conference Memorandum filed on July 23, 2014, the revised Attachment A updates the description of the Lyft insurance policies and clarifies Applicant's compliance obligations to reflect certain provisions from the ETA Order. See Lyft Exhibit 1-B. To the extent that any party suggests that the Commission must rely solely on the original Application, Applicant respectfully requests a waiver of Section 5.91(c) of the Commission's Regulations based on the fact that Applicant's updates were limited to compliance matters and Protestant's had opportunity to address the updates and clarifications at the following September 10 hearing. See 52 Pa. Code § 5.91(c); *but cf. Brian M. Rudnik v. Verizon Pennsylvania Inc.*, 2011 WL 1621799 (Penn.P.U.C. 2011) (barring amendments to fact set forth in Amended Complaint submitted after evidentiary hearings).

and granting temporary protection for the trip data submitted in response to the July 31 Interim Order. Pursuant to the revised briefing schedule, Lyft hereby submits this Main Brief.

B. Overview

Lyft commenced these proceedings to offer a peer-to-peer platform to facilitate transactions between passengers and drivers using their own vehicles to provide transportation in Allegheny County. The purpose is to enhance access to modernized transportation alternatives, supplement existing public transportation, reduce single occupancy vehicle trips as well as vehicle ownership and usage, while assisting Pennsylvania in reducing greenhouse gas emissions.

Unfortunately, as with any new and novel technology or service, incumbent interests have deployed tremendous resources to combat and oppose Lyft's proposed service and preserve the status quo. The purpose of this Main Brief is to explain the proposed service, detail the appropriate regulatory treatment, document the public demand and need for Applicant's service, review Applicant's fitness, and address Protestants' arguments and misguided efforts to deny the benefits of Lyft's service for the citizens of Allegheny County.

C. Summary of Argument

The Main Brief will address the regulatory standards relevant to the Commission's review of the Application and respond to issues raised by Protestants throughout the litigated proceedings. *First, Lyft will review the Commission's classification of existing motor carrier services and confirm that Lyft has appropriately requested approval to offer experimental transportation network service as the proposed service differs from existing classifications.*

Lyft will additionally present the record evidence and supporting legal arguments establishing that Applicant has demonstrated a public demand and need for the proposed service

and offered evidence more than sufficient to support a finding of fitness to offer the proposed service.

Due to expressed interest from the ALJs and the Commission, Applicant will separately argue that the insurance policies proposed to support the Application are consistent with and exceed the Commission's minimum coverage requirements.

Applicant will additionally argue that Protestants failed to meet their burden of showing that Application approval would endanger or impair their existing certificated services.

Finally, Applicant will address its request that the Commission reverse the September 2, 2014 Order denying Applicant's request for confidential treatment of the ride data furnished in response to the ALJs' July 31, 2014 Interim Order. For the reasons set forth in Section G of this Main Brief, the Commission should adopt the 2nd Protective Order and direct the Commission's Secretary to maintain trip data records under seal consistent with Section 335 of the Public Utility Code. 66 Pa. C.S. § 335.

II. ARGUMENT

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, Applicant has the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P. U. C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa. C.S. §704; *Mill v. Pa. P. U. C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required

than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. P. U. C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

2. Evaluation of Application for Certificate of Public Convenience

Section 1101 of the Code, 66 Pa. C.S. § 1101, requires Commission approval, in the form of a Certificate of Public Convenience, for Applicant to begin to offer experimental transportation service. In regard to the issuance of a certificate of public convenience, Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a), states, in pertinent part, as follows:

A Certificate of Public Convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

The evidentiary criteria adopted by the Commission for deciding motor carrier applications, including applications for experimental common carrier service under Section 29.352 of the Commission's Regulations, 52 Pa. Code § 29.352, are contained in Section 41.14 of the Commission's Regulations, 52 Pa. Code § 41.14:

- 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 Applicant lacks a propensity to operate safely and legally.
- 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.

As discussed below, the substantial evidence of record confirms that Applicant has met its burden of proof. Applicant demonstrated strong demand or need for TNC service in Allegheny County. Applicant, moreover, demonstrated that it has the technical and financial fitness to provide the proposed service and that it has the propensity to operate safely and lawfully. Furthermore, Protestants failed to establish that entry of Applicant's proposed service in Allegheny County would endanger or impair operations of existing taxi companies in contravention of the public interest.

B. Classification of TNC Service

Applicant's proposed service is a form of ridesharing evolved from "traditional" ridesharing services. As further described below, Applicant offers an accessible TNC platform that connects drivers willing to offer transportation service with their personal vehicles to passengers seeking efficient and safe transportation. Although Applicant's proposed service retains the functionality and broader societal goals of traditional ridesharing, the TNC service includes a compensation element that distinguishes it from traditional ridesharing. *See* Tr. 298 (stating that not all uses of the word "ride-sharing" relate to the type of operation currently proposed by Lyft). Lyft's TNC platform also falls outside the paradigms of traditional motor carrier services. Accordingly, Lyft proposes to operate under the PUC's authority to approve applications for experimental service.

1. TNC Service Is a Ridesharing Service

Title 55, Section 695.1, of the Pennsylvania Statutes sets forth regulatory guidelines for traditional ridesharing arrangements. *See* 55 P.S. § 695.1 ("Ridesharing Act"). Specifically, the statute defines the following services as ridesharing arrangements:

- (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.

Id. Under the Ridesharing Act, the services listed above are exempt from numerous Pennsylvania regulatory requirements, including regulation by the Commission. Although Lyft's proposed service does not fit precisely in any of the three traditional ridesharing designations, the proposed TNC shares many attributes of the first category of traditional ridesharing, as drivers using the Lyft platform may offer rides that are incidental to the driver's purpose. For example, a driver using the Lyft platform could plan a trip to a shopping district, log onto the platform, and then pick up a passenger heading in the same direction.

What differentiates Lyft's platform from traditional ridesharing is that Lyft seeks to scale participation in ridesharing beyond the existing ridesharing services and communities. The founders of Lyft have a vision where it achieves critical mass such that, at any given time, there would be a driver already traveling towards a location to which a nearby passenger wishes to travel. As described by Lyft Witness Joseph Okpaku:

Lyft offers a platform for people who want to get rides with people who have empty seats in their cars who are willing to give rides. The whole concept is founded upon a statistic that shows that on average 80 percent of the seats in cars go unused every single day. That's a fancy way of saying that when we drive, we tend to drive alone. Given the fact that we've pretty much built out all the roadways we can, the founders of the company determined that [the] 80 percent figure represents the biggest inefficiency in ground transportation, so they sought to develop a way to encourage people to fill up the empty seats in their cars.

Tr. 235. As a first step towards achieving the stated goal, Lyft developed an easily accessible user platform and added a donation and/or compensation component to incentivize driver participation. *See id.* at 235, 352, 274. As more drivers are incentivized to participate based on the available compensation, the use of the platform nears the point where more rides incidental to a driver's normal activities will be offered. *See id.* at 352.

The Eastern Pennsylvania Taxicabs argue that Lyft has attempted to masquerade as a ridesharing service despite not meeting the criteria set forth in the Ridesharing Act. *See* Tr. 296. As discussed above, these claims are baseless, because Lyft has never claimed to be a "ridesharing" service within the meaning of the Ridesharing Act. The suggestion that Lyft has attempted to misappropriate the Ridesharing Act is indicative of the extreme lengths to which the Eastern Pennsylvania Taxicabs will go to disparage Lyft. Lyft has not sought any of the exemptions available under the Ridesharing Act. The Application referenced the Ridesharing Act solely in the background discussion to illustrate the origin of Lyft's service. *See* Lyft Exhibit 1-A, Redline, p. 2. Applicant readily acknowledges that the proposed TNC ridesharing service differs from traditional ridesharing services.

2. TNC Service Falls Outside Traditional Common Carrier Classifications in the Commission's Regulations.

Protestants to this proceeding have contended that Lyft's service is no different from traditional taxicab or limousine service. *See* Tr. 105. These claims are without merit. As a matter of law, the proposed TNC service is not call or demand or limousine service. Call or demand service is specifically defined under PUC authority as "[l]ocal common carrier service for passengers, rendered on either an exclusive or 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 hails, or both.**" 52 Pa. Code § 29.13. (Emphasis added). Similarly,

limousine service is specifically defined as "[l]ocal, nonscheduled common carrier service for passengers **rendered in luxury-type vehicles** on an exclusive basis which is arranged for in advance. *See id.* (Emphasis added). As described below, the service proposed by Lyft fall outside both definitions.

As confirmed by Lyft Witness Joseph Okpaku, drivers providing transportation service matched through the Lyft platform do not engage in call or demand service because they are not permitted to accept telephone calls or seek street hails. Tr. 237. Mr. Okpaku elaborated on the methodology for obtaining a Lyft ride as follows.

...the way you request a ride through the Lyft platform is by pressing a "request ride" button on your phone. That's the only way you can get a Lyft ride, so there are no street hails of a Lyft vehicle. The only way you can get a Lyft ride is if you have signed up into the Lyft platform and request the ride through the Lyft platform.

Tr. 237. Mr. Okpaku further clarified that, in addition to being prohibited from seeking or accepting street hails, drivers and passengers using the Lyft platform cannot arrange rides by making telephone calls. *See id.* Therefore, the service proposed by Lyft is not "call or demand" service, as defined in the Commission's Regulations.

Notwithstanding the clear language in the Regulations, Protestants argue that the use of a mobile application does not distinguish Lyft's proposed service from call or demand service because existing taxi carriers also use mobile applications. *See* Tr. 117. This argument violates the Pennsylvania rules of statutory construction, which state that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b).⁶ By enabling rides exclusively by use of the mobile platform, Lyft's proposed platform cannot correctly be analogized to a service classification

⁶ The Pennsylvania rules of statutory construction are applicable to the Commission's Regulations. *See F.O.P. Lodge No. 5 v. Philadelphia*, 590 A.2d 384 (1991).

predicated on use of telephone calls or hail. Further, the record evidences that the use of mobile applications by existing carriers differs significantly from the use of such technology by the Applicant. The record shows that existing carriers use mobile technology merely to "digitize" their existing functions, *i.e.*, using the mobile application to connect to a dispatcher or complete a payment after a ride. *See* Tr. 98-100.

To the contrary, Lyft designed its platform from top to bottom to maximize the utility of mobile technology and offer new functionality. Lyft offers the mobile platform to be used by drivers and passengers seeking transportation service, with the long-term goal of aligning drivers regular use of their personal cars with passengers who also need rides to same places. *See* Tr. 352. What this means is that Lyft is attempting to use mobile technology to combine the convenience of auto travel with the environmental benefits (*e.g.*, emissions reductions, etc.) of mass public transit. *Id.*

Lyft also applies mobile technology in unique ways to promote safety. While existing carriers use mobile applications to submit payment at the point of service, Lyft uses the technology to eliminate the necessity for point of service transactions at all. *See* Tr. 236. Passengers using Lyft's service have 24 hours from the end of each ride to confirm payment from a credit card account that was preloaded onto the platform when they signed up. *See id.* This allows passengers to review a bill and address disputed charges before payment is finalized, but after exiting the vehicle. Aside from added convenience, this payment model reduces potential for conflict between passengers and drivers, thereby enhancing the safety of Lyft's service as compared to traditional motor carrier services. Additional technological enhancements unique to Lyft's proposed service, such as the two-way rating system and 24-hour Trust and Safety response team, are further described in Section II.D, *infra*.

Similarly, drivers providing transportation service through the Lyft platform do not engage in limousine service because Lyft service is not restricted to luxury vehicles. *See* Tr. 238. Mr. Okpaku addressed the differentiating factor between limousine service and the proposed service as follows:

All the differences that I already mentioned with respect to taxis pretty much apply [to limousine service]. I would also add to that [*sic*] with limousine you can usually request what type of limousine you want, whether it's a stretch Hummer or what the amenities might be of the particular limousine.

This is obviously not the case with the Lyft ride. You can't request a specific vehicle, you can just request a ride in the vehicle that is closest that accepts the ride as the one that will pick that passenger up.

Tr. 238. Therefore, the proposed service is not limousine service as defined in the Commission's Regulations.

Finally, the proposed service cannot be placed under any of the remaining classifications set forth in Section 29.13 of the Commission's Regulations. The proposed service is not "scheduled route service" because Lyft has not proposed to "operate according to schedules along designated routes." *See* 52 Pa. Code § 29.13; *but see* Tr. 236 (confirming that the passenger requests the ride at a time of their choosing and directs the driver as to "where he or she is going"). The "group and party service" classification also fails to capture the proposed service because Lyft's service is not "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"⁷ *Id.* Lastly, the proposed service is not "airport transfer service" or "paratransit service" because Lyft has not proposed to offer non-exclusive service as required for these classifications. *See id.*; *see also* 52 Pa. Code § 29.353 (defining paratransit service as nonexclusive service); *see*

⁷ Under the Section 29.322, charter service is transportation of a group where "for which payment is made by a single individual or organization and not by the passengers as individuals." *See* 52 Pa. Code § 29.322.

Tr. 236 (because passengers obtaining Lyft rides have full control over the ride, the service is not nonexclusive as defined in 52 Pa. Code § 29.1).

Accordingly, Protestants' contentions that Lyft service is no different from traditional call or demand, limousine, or other traditional motor carrier services are misguided and inapt.

3. Lyft is Not a Transportation Broker as Defined In The Public Utility Code.

The Eastern Pennsylvania Taxicabs allege that Lyft operates as a Transportation Broker as defined in Section 2501 of the Public Utility Code. *See* 66 Pa. C.S. § 2501; *see also* Taxicab Answers, pp. 3-4 (alleging that Lyft will act as a broker of transportation services). As demonstrated below, the proposed service differs from brokerage service as defined in the Public Utility Code, and thus the Eastern Pennsylvania Taxicabs' arguments are incorrect.

The Public Utility Code defines the term "broker" as follows:

"Broker." 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. Contrary to the allegations from the Eastern Pennsylvania Taxicabs, Lyft's proposed service does not incorporate the functions of a broker. As set forth in Section 2501, a broker must either sell, offer, or hold out as offering either "transportation by a motor carrier" or "the furnishing, providing, or procuring of facilities therefor." *See* 66 Pa. C.S. § 2501. Lyft does not propose to "sell or offer," or hold out as one who "sells, provides, furnishes, contracts, or arranges" either transportation or the furnishing, providing, or procuring of the facilities, *i.e.*,

vehicles, for transportation. *See* Tr. 294. As detailed by Mr. Okpaku, Lyft offers a platform that can be used by passengers and drivers at their discretion.

We provide a platform for people who are willing to offer rides in their cars to offer them to people who are in need of rides. So the only thing that we provide is the platform. We don't own any vehicles. We don't employ any drivers. So that's what we provide is the platform.

Tr. 294. Mr. Okpaku further described how the platform operates precisely in the opposite manner of a broker, by providing a passive service that can be used by passengers and drivers without reliance on the active engagement of a middleman broker or dispatcher:

Well, a taxicab dispatch company actually dispatches rides, meaning that if you request a ride, my understanding of how the typical process works is that a call is made to a particular driver. That driver is assigned a location to go pick somebody up and eventually drop them off. There is no such dispatching that goes on with the Lyft platform. Lyft does not direct any particular driver to go pick any particular person up. Lyft just provides a platform for a passenger to request a ride and provides a system by which nearby drivers can be notified, and if they want to give a ride, they can. If they choose not to, they don't have to.

Tr. 294-295. As outlined by Mr. Okpaku, Lyft offers a technology service through which passengers and drivers connect. This service differs substantively from a brokerage, where the broker connects specific passengers (or shippers) to specific transportation providers.

Reference to prior PUC caselaw further clarifies the difference between the proposed TNC service and brokerage services. *In Re Friedman's Exp., Inc.*, 73 Pa.P.U.C. 152 (July 6, 1990), the Commission identified the following characteristics of a broker:

A broker *arranges* for the transportation of goods; it *acts as a middleman* to bring together shippers (manufacturers, distributors, buyers, sellers, etc.) that need goods moved and carriers that are capable of performing the transportation.

Id. As emphasized by Mr. Okpaku, the technology provided by Lyft enables drivers and passengers to instantly arrange for transportation without resorting to a middleman. This technological innovation fundamentally distinguishes Lyft's proposed service from brokerage

services because the users of TNC services arrange for transportation using the platform provided by the TNC whereas brokers arrange for transportation either directly or jointly with other carriers. Accordingly, Protestants' arguments that Lyft operates as a broker are simply incorrect.

4. TNC Service Is Appropriately Regulated As Experimental Transportation Service.

As Lyft falls outside of the existing motor carrier classifications set forth in the Commission's Regulations, and further is not a broker, the Commission should grant authority to offer experimental TNC service pursuant to its Section 29.352 and 29.13(6) of its Regulations, which authorize the Commission to award Certificates of Public Convenience to common carrier service for passengers that differs from the services currently defined in the Regulations. *Application of Yellow Cab Company of Pittsburgh Inc., t/a Yellow X, Order*, Docket No. A-2014-2410269 (May 22, 2014), p. 6 (hereinafter "*YellowX*").

In keeping with their efforts to deny Lyft's service to the citizens of Pennsylvania, the Eastern Pennsylvania Taxicabs have indicated that Lyft should not be certificated because it does not qualify as a "public utility" subject to the Commission's jurisdiction. Lyft agrees that, from a general industry standpoint, Applicant does not "own or operate any vehicles, equipment or facilities to transport passengers or property as a common carrier." *See* Tr. 295. However, as specifically applied under Pennsylvania law, the service proposed by Lyft is consistent with common carrier service under the Public Utility Code.

As a TNC, Lyft does not own or operate vehicles, assume custody of any vehicle or equipment that is used to provide transportation service, or hire individuals to provide

transportation service.⁸ See Tr. 296. Lyft offers a platform service which drivers can use as independent contractors to offer transportation service to passengers seeking safe and efficient transportation. See Tr. 295-296. However, the definition of "common carrier" under the Public Utility Code does not require ownership or actual operation of facilities or equipment used in transportation. In pertinent part, the definition states 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. The plain language of the statute confirms the provision of service directly or indirectly for transportation of passengers constitutes common carrier service. See *id.* Notably, the service provided by a common carrier need not be transportation service as long as the service rendered indirectly results in transportation service. See *Highway Freight Forwarding Co. v. Public Service Commission*, 108 Pa. Super. 178 (1933) ("*Highway Freight*"). As set forth in *Highway Freight*, ownership of transportation facilities is not necessary for designation as a common carrier. Depending on the facts of a particular situation, the Commission may identify non-transportation entities as common carriers if where the entity assumes some element of responsibility for the underlying transportation service. *Id.* (finding forwarder to be acting as common carrier when insuring goods). Particularly as Lyft has modified its original Application to offer primary insurance coverage to drivers using its platform, the Commission could find that Lyft has exerted sufficient responsibility for the service proposed in Pennsylvania to be regulated as a common carrier offering experimental TNC service. See Lyft Exhibit 1-A.

⁸ Contrary to suggestions from JB Taxi, receipt of payment for TNC service does constitute a hire of a vehicle. See Tr. 577. The passenger furnishing payment for transportation service is the entity hiring the vehicle. See *Damiani v. Public Service Commission*, 73 Pa. Super. 37, 40 (1919).

Therefore, despite prior uncertainty regarding the applicability of Commission authority to Lyft, subsequent modifications to the Application support a finding of Commission jurisdiction to grant authority to offer experimental common carrier service as a TNC.

C. Lyft Has Demonstrated A Public Demand and Need for the Proposed Service in Allegheny County.

In support of the Application, Lyft offers 31 verified statements from members of the public.⁹ As proof of need for motor carrier applications, the Commission "routinely accepts verified statements supporting need without the testimony of a witness." *See Application of AAA Alpine Taxicab Company, LLC*, 2006 WL 6607486 (Penn.P.U.C. 2006) (Commission reversing ALJ decision to deny protested application because applicant furnished verified statements instead of live testimony); *see also Application of Crystal Limousine, Inc.* 200 WL 35798500 (Penn.P.U.C. 2000).

The public comments establish that Lyft is needed to support everyday activities, such as grocery shopping, visiting friends and family, and obtaining safe transportation to and from nighttime entertainment venues. *See* Lyft Exhibit 2. The comments from the public correlate precisely with public comments recently filed with the Commission by Representative Erin C. Molchany, 22nd Legislative District, Allegheny County. *See Testimony of Representative Erin C. Molchany, Pennsylvania Public Utility Commission En Banc Transportation Hearing*, Docket No. M-2014-2431451 (August 28, 2014). Representative Molchany described the need for TNC service in Allegheny County with a strong emphasis on the reduction of DUIs and beneficial effect to the local economy:

Pittsburgh's South Side has one of the highest concentrations of liquor licenses in the state. Unfortunately, this one neighborhood has seen an increase in reported

⁹ Of which 29 relate to service in and around Allegheny County.

crime, and has become a focus [for] Pittsburgh Police resources on weekend nights. In 2010, City Councilman Bruce Kraus, engaged the Responsible Hospitality Institute, a national organization that provides consulting and recommendations [sic] to cities seeking to better manage their nighttime economy. Working with RHI and Councilman Kraus, I was not surprised to hear that an essential component to their management plan was moving people efficiently and safely away from the business district after bars had closed. With Pennsylvania ranked 4th in the nation for DUI fatalities, the regulation and influx of transportation network companies like Lyft and Uber could prove to be an important component of any city's [sic] overall plan to ensure everyone can enjoy the attractions of nightlife and get home safely.

See id. The below summaries of comments from the public mirror the remarks from Representative Molchany.

| Summary of Select Comments from Lyft Exhibit 2 | | |
|---|---------------|--|
| Name | County | Summary |
| Dylan Ahrens | Allegheny | Lyft is needed 2-3 times a week for trips to the East End of Pittsburgh |
| Sean Cochrane | Allegheny | Lyft is needed for daily work commute and weekend late night outings |
| Julie Cook | Allegheny | Lyft is needed for late nights to avoid DUI |
| Rachel Edman | Allegheny | Lyft is needed for safe travel, easy transportation even without money on person |
| Steven Folwer | Allegheny | Lyft is needed for vision impaired individuals that cannot drive and cannot carry large grocery bags using public transportation |
| Diane Torbich | Allegheny | Lyft is needed to get to doctor's appointments and grocery store |
| Emily Winn | Allegheny | Lyft is frequently needed for late night travel in Lawrenceville, East Liberty, and Shadyside neighborhoods |

As indicated by the above comments and full remarks set forth in Lyft Exhibit 2, the citizens in Allegheny County need, want, and deserve the benefits of Lyft's TNC service. As abundantly

illustrated by the above quotes, Lyft has demonstrated a public demand and need for the service Lyft provides.

D. Lyft Has Demonstrated Technical Fitness, Financial Fitness, and a Propensity to Operate Legally.

As set forth in Section 41.14(b) of the Commission's Regulations, an applicant seeking to offer transportation service must show fitness to render the proposed service. 52 Pa. Code § 41.14(b). The Commission measures fitness by examining three factors: technical fitness, financial fitness, and propensity to operate safely and legally.

The Commission has defined the three factors as indicated below:

1. Technical expertise - applicant must have technical capacity to meet the need in a satisfactory fashion.... Applicant must possess sufficient staff, facilities, and operating skills, to make the proposed service feasible, profitable, and a distinct service to the public.
2. Financial capacity - applicant should possess the financial ability to give reliable and respectable service to the public.... Applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service.
3. Propensity to operate safely and legally - in this regard, lack of fitness is demonstrated by persistent disregard for, flouting, or defiance of the Public Utility Law and the commission's orders and regulations... ; and by violations in matters affecting the safety of operations.

Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262, 285 (1990), (quoting *Re Perry Hassman*, 55 Pa.P.U.C. 661 (1982)). To further guide its evaluation of applications for transportation service, the Commission has established more specific considerations, and as such, will assess:

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.

52 Pa. Code § 41.14(b). The record in this proceeding amply demonstrates that Lyft has satisfied its burden under Section 41.14(b) and established that Applicant is fit to offer experimental TNC service in Allegheny County.

1. Technical Fitness

Lyft has demonstrated that it has possesses more than technical capacity to offer experimental TNC service in Allegheny County. Lyft recognizes the necessity to offer comprehensive plans for bringing TNC service to Pennsylvania in a manner that preserves both Lyft's and the Commission's high standards for user convenience, efficiency and safety. As described below, Lyft has carefully crafted detailed safety processes designed to deliver its unique TNC service safely to the public and continues to constantly review and refine its procedures to stay at the forefront of transportation efficiency and effectiveness while developing new tools to offer unprecedented safety to drivers and passengers.

a) Driver Safety

Consistent with Sections 29.501-508, Lyft has developed a rigorous on-boarding program to ensure that individuals approved as drivers under the platform are safe and fit to serve. Lyft

Witness Joseph Okpaku offered the following summary of Applicant's thorough and sophisticated procedures for vetting potential drivers:

So there's four components of what we call the on-boarding process for a Lyft driver. The first thing is we do a very comprehensive criminal background check. This background check is going to be based on the driver's name, date of birth, Social Security Number. *et cetera*, and other identifying features, and from that, we are able to determine the applicant's former places of residence.

Actually, I'll get to that in a second. Just based on all that information, we're going to do a nationwide search anything just to see what sort of criminal records come up just based on those identifiers. But we're also going to do -- once we locate counties of residence for that applicant, we are going to do a direct county search of every county that that applicant has resided, and that's important for the following reason.

Most national databases, in fact I think all national databases, rely upon the transmission of criminal disposition information from the county to the database that's aggregating all the information.

There have been numerous reports that showed that there can be errors in transmission of that data. There can be delays in the transmission of that data. Sometimes there can be a final disposition and there can be a lag of a couple of months before that final disposition in a criminal case is actually transmitted from the county to that database.

So in order to make sure that we're doing -- that we have the most up to date information possible Lyft is employing a service that will go directly to the county and check the county's records directly. So, in other words, we're cutting out the middle man. We're not waiting for information to be transmitted. We're going directly to the source. This even means that for the few counties that don't have their information electronically available, we'll actually send a person to go physically examine the records.

So that's a significant portion of criminal background check. We also do a check of the federal criminal database, and, lastly, we do a check of the federal 50-state sex offender database as well.

Assuming that applicant passes that background check, we are then doing a driving record check. We are looking to see if the applicant has more than two what we call serious driving infractions on their record. A serious driving infraction would include something like a reckless driving or a hit and run. We're also looking to see if there are DUIs on a driver's record. and we're checking that for the past seven years.

Assuming that the driver has passed both the criminal background check and the driving background check, there will be a ride-along with the driver to make sure that the driver observes the rules of the road, is he easily distracted, what have you and at the same time we'll be doing the vehicle inspection.

Then and only then, if they pass all of those processes will they be approved to be a Lyft driver.

Tr. 268-270. As described at length by Mr. Okpaku, Lyft has carefully developed a comprehensive background check process utilizing both local and national resources. *See id.* However, as complete and effective as they may be, the background and driving record checks do not encompass the totality of tools developed by Applicant to ensure it meets the demand for TNC service in a highly satisfactory fashion. Lyft also offers a two-way rating system that *incentivizes and assures that riders offered through the platform remain safe, comfortable, and responsive to the myriad needs of the public.*

The rating system utilized by Lyft is an often unappreciated or underappreciated feature of Lyft's TNC service. It offers more functionality than a standard customer satisfaction survey commonly used in retail industries. Lyft has designed the system to trigger real-time action in situations where safety issues are implicated. *See Tr. 271.* First, the passenger rates the driver on a five-star scale. If the passenger rates a driver five stars, the system assumes no safety issues were implicated. *Id.* However, if a passenger gives less than a five-star rating, the system will prompt the passenger to answer directed questions, including whether safety issues resulted in the lower rating. *Id.* If the passenger implicates safety issues, Lyft receives an alert. Specifically, the Lyft Trust and Safety Team, which is a department within the organization that is staffed 24/7 and can immediately respond to safety concerns transmitted through the rating system. Tr. 359. Applicant has designed the platform to enable the Trust and Safety team to remove an offending driver or unsafe passenger from the Lyft platform. Tr. 271, 354, 359.

As further indication of Lyft's technical fitness, Applicant utilizes technology in innovative ways to enhance the effectiveness and public benefit of its TNC service. For example, Applicant can use the platform to enforce its anti-discrimination policy to make sure all communities and citizens benefit from the proposed service. *See* Tr. 273. Any narrative feedback provided by users is searchable, allowing Applicant to monitor feedback for discriminatory or offensive language. *See id.* Also, because of the potential for individual drivers to unfortunately engage in more subtle discrimination, *i.e.*, declining rides to certain destinations, Lyft has also taken measures to combat such indirect discrimination, including the ability to use GPS technology to track driving patterns. *Id.*

Another innovative reflection of Lyft's technical fitness is the driver training program. As a TNC, Lyft must balance the dual objectives of making the service accessible to non-professional drivers while offering sufficient training to familiarize drivers to the nuances of commercial driving. *See* Tr. 270. As Mr. Okpaku observed, "Lyft is trying to get everyday, the safest of everyday people, but everyday people nonetheless..." to offer riders within their communities. *See* Tr. 236. To provide efficient training within driver networks, Lyft keeps a registry of experienced and highly rated drivers to serve as mentors to newer drivers. Each new driver must complete a "ride-along" with an experienced driver and complete several video presentations developed to educate drivers about safety precautions, professionalism, and customer service. Tr. 355. The ride-along process and video training programs are designed to complement the capabilities already demonstrated by the driver in passing the rigorous background and driver record examination. *See* 355, 268-270. These additional processes are meant to serve as a final check to ensure that approved drivers are ready to serve.

With the thorough criminal checks, driver history check, driver training program, and innovative ratings system, Lyft has demonstrated proficiency and technical expertise in designing and executing forward-looking processes to ensure that use of "non-professional" drivers occurs without risk to public safety.

b) Vehicle Safety

In submitting its April 3 Application, Lyft proposed to rely solely on the Applicant's internal 19-point vehicle inspection. *See* Lyft Exhibit 1-A, Redline, p. 6. While Lyft remains confident that the 19-point inspection, coupled with the rating system provide effective safety protection, Applicant has further modified its proposal to pass annual safety inspections in compliance with Pennsylvania Department of Transportation Regulations and consistent with the Commission's vehicle safety regulations. *See* 75 Pa.C.S. Chapter 47; 67 Pa. Code §§ 175.61-80; 52 Pa. Code §§ 29.402 and 29.405. Lyft further acknowledges that vehicles used in conjunction with Lyft's platform are subject to inspection by Commission enforcement officers. Accordingly, all claims from taxicab Protestants regarding uneven regulation from a vehicle inspection standpoint are rendered moot. *See* Tr. 56, 93, 179. That said, while submitting to the PUC's inspection authority, Lyft cautions the Commission to apply its authority consistent with the nature of the service and remain mindful of the fact that Lyft drivers, on average, are available on the platform less than 15 hours per week and do not incur wear and tear on their vehicles commensurate with a traditional motor carrier vehicle. *See* Tr. 321.

Contrary to concerns expressed by Protestants, vehicles used in conjunction with the Lyft platform will be subject to the annual inspections, supplemental internal inspections, and potential PUC compliance inspections, evidencing Lyft's strong commitment to public safety.

c) Other Considerations

Protestants will no doubt attempt to discredit Applicant's fitness by evaluating Applicant's service within the context of traditional taxicab carriers. For example, Protestant may argue that Applicant does not own a vehicle fleet or operate a centralized dispatch office. These concerns misunderstand the service offered by Applicant. As emphasized above, Lyft offers a platform service that can be used to obtain transportation. This service does not require the same facilities necessary to provide traditional motor carrier service. However, Applicant has demonstrated the technical operating skills necessary to deliver efficient and sophisticated service to the citizens of Allegheny County.¹⁰

Additionally, while the granting of the ETA Application provides no presumption of fitness, Application requests that the Commission consider that Applicant has been operating in Allegheny County under its ETA authority since August 16, 2014, and no drivers or passengers have filed a Complaint with the Commission regarding Lyft's service with the PUC. This record is particularly compelling given that Applicant includes the Commission's complaint hotline and website on every receipt. *See* Tr. 274.

2. Financial Fitness

Lyft has demonstrated financial fitness by affirming that it has access to resources sufficient to finance the proposed service. As confirmed by Mr. Okpaku, Lyft has completed several successful rounds of venture capital funding, most recently receiving \$250 million from various investors in April 2014. Tr. 285. Further, unlike other services regulated by the Commission, TNC service involves less capital investment as Lyft would not purchase vehicles to offer the service. *See* Tr. 294. Additionally, as evidenced by the Form E currently on file

¹⁰ The Eastern Pennsylvania Taxicabs questioned Lyft Witness Joseph Okpaku on certain local regulatory requirements, some of which Mr. Okpaku was understandably unable to confirm on the stand. *See* Tr. 309-311. As referenced by Mr. Okpaku, Lyft maintains a variety of in-house expertise, including independent legal, operations, and engineering departments. If approved, Lyft's compliance team would monitor the applicable Pennsylvania regulations.

with the Commission in support of Lyft's ETA, Lyft has sufficient resources to purchase the insurance required to support its proposed service under Pennsylvania law. *See* 52 Pa. Code § 41.14(b)(1). Finally, to the extent necessary, Lyft is willing to furnish evidence of financial resources specifically dedicated to supporting Pennsylvania service.

Accordingly, Lyft has satisfied its burden of financial fitness and is further willing to submit supplemental documentation of available resources as may be necessary.

3. Lyft has demonstrated a propensity to operate legally

Lyft has demonstrated a propensity to operate legally and, in the alternative, has demonstrated a strong public need sufficient to overcome any prior violations of the Commission's Regulations. The Commission generally evaluates an Applicant's propensity to operate legally by addressing whether Applicant has shown a "persistent disregard for, flouting, or defiant attitude toward the [Code], or the orders and regulations of the [PUC]." *Lehigh Valley Transp. Services, Inc. v. Pennsylvania Public Utility Com'n*, 56 A.3d 49, 58 (Pa.Cmwlth. 2012)("Lehigh Valley"). Importantly, even a finding of prior violations of the applicable regulations or statutes does not automatically compel denial of an application as Section 41.14 of the Commission's Regulations establishes that "authority *may* be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally." *See* 52 Pa. Code § 41.14. (Emphasis added.)

a) Propensity to operate legally

The gravamen of claims regarding Lyft's alleged lack of propensity to operate legally stem from ongoing legal proceedings regarding Lyft's provision of service in Allegheny County prior to receiving a Certificate of Public Convenience granting ETA to offer experimental TNC

service.¹¹ *See* Tr. 308. As described in Section II.B, of this Main Brief, *supra*, Lyft commenced service on the basis that Pennsylvania statutes and regulations did not contemplate TNC service, particularly as the service existed prior to modifications adopted through the ETA proceeding and carried over to the instant application. *See* Lyft Exhibit I-A. Following a Petition for Interim Emergency Relief filed by the Commission's Bureau of Investigation Enforcement ("I&E") and seeking a cease and desist of Lyft's operations, ALJs Long and Watson issued an Interim Cease and Desist Order on June 5, 2013, to which Lyft did not cease and desist. *See generally* Docket No. P-2014-2426847. However, notwithstanding Protestants' misguided arguments to the contrary, this single instance of regulatory noncompliance does not rise to a "persistent disregard for, flouting, or defiant attitude toward the [Code], or the orders and regulations of the [PUC]."¹² *Lehigh Valley*, at 58.

Lyft further avers that TNC service is new and therefore not clearly within the scope of the Commission's regulatory authority. While the Commission has approved a similar Application from YellowX, the TNC service proposed therein differs in at least one aspect from the instant proposal, as Lyft has not proposed to utilize the "trip-lease" construct applied by YellowX. *YellowX*, p. 6. Therefore, some uncertainty remains as to whether the Commission will follow its decision in the ETA Application and find Lyft's service to be within its jurisdiction. To the contrary, Lyft has remained actively engaged with the Commission, including working with I&E to address the concerns regarding Lyft's prior service and

¹¹ Counsel for the Eastern Pennsylvania Taxicabs repeatedly refers to a June 5, 2014 Order from the Commission, it is presumed that counsel meant to reference the June 5, 2014 Interim Order issued by ALJs Long and Watson, which was adopted by the Commission on July 24, 2014. *See* Tr. 308.

¹² Lyft submits that issues arising during the evidentiary hearings concerning proprietary treatment of certain discovery and disputes regarding the timing of discovery responses are procedural in nature, not indicative of any desire to flout Commission laws or regulations, and were generally resolved through discussions between the parties and the ALJs during hearings. *See* Tr. 196, 225.

voluntarily modifying its internal policies to reflect the Commission's safety and insurance standards.¹³ See Lyft Exhibit 1-A.

Notably, although I&E issued a Formal Complaint alleging that Lyft did receive a citation from I&E for alleged prior unauthorized operations, this proceeding remains pending before the Commission. See *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Complaint, Docket No. C-2014-2422713 (June 5, 2014). The Commission has previously held that even adjudicated violations may not demonstrate a lack of propensity to operate legally, which naturally suggests that pending allegations should be entirely disregarded from any consideration of Lyft's lack of propensity to operate legally. See *Lehigh Valley*, at 58. (affirming that "[t]wo adjudicated violations over the span of three years do not demonstrate "a persistent disregard for, flouting or defiant attitude" toward the law, which is the hallmark of a "propensity" to operate outside the law"); see also *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996); *appeal denied*, 698 A.2d 597 (Pa. 1992).

Moreover, even assuming arguendo that Lyft committed prior violations of the Commission's Regulations or the Public Utility Code, denial of the Application would not be in the public interest. As set forth in Section II.C of this Main Brief, *supra*, Lyft has provided evidence of tremendous need for the efficiency and flexibility afforded to the public by the proposed TNC service. The importance of TNC service in Pennsylvania, particularly of the quality and reliability of Lyft's proposed service, is particularly relevant to reducing DUI fatalities as the state currently ranks 4th in the nation in DUI fatalities. See *Testimony of*

¹³ At the evidentiary hearing, counsel for the Eastern Pennsylvania Taxicabs asked Mr. Okpaku to speculate as to whether Lyft would continue to operate in Pennsylvania if the Commission denied the Permanent Certificate for Pennsylvania. Mr. Okpaku stated that he did not know and further clarified that he was not suggesting that Lyft would continue operating, but was unable to answer because such operational decisions are not within his control as the Director of Public Policy. See Tr. 307-308; *but cf.* 354.

Representative Erin C. Molchany, Pennsylvania Public Utility Commission En Banc Transportation Hearing, Docket No. M-2014-2431451 (August 28, 2014).

As stated above, Lyft has generally operated in accordance with the Public Utility Code and will cooperate with the Commission to address the circumstances of prior regulatory disputes. On balance, Lyft has shown a willingness and desire to comply with the Commission's authority and an impeccable commitment to offer safe and reliable TNC service to the public.

b) July 31 Interim Order

On July 31, 2014, ALJs Long and Watson issued an Interim Order citing questions directed from Commissioner James Cawley to be developed on the record at the ongoing investigation at Docket No. C-2014 -2422713. The ALJs deemed these inquiries to be relevant to the Application proceeding. In compliance with the ALJs' request, Lyft furnished information regarding the number of rides provided in Pennsylvania between during certain time periods. However, the July 31 Order also directed parties to address the following:

- (2) Should there be a finding that Lyft's conduct in any one or all of the periods in question (1), above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
- (3) Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the Applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

Lyft respectfully submits that Question No. 2 is irrelevant to this proceeding and properly addressed by I&E in the context of the Complaint proceeding, as originally directed by Commissioner Cawley. With regard to Question No. 3, Lyft would similarly submit that the question is premature as the investigation of Lyft's prior operations remains ongoing. Further, as addressed above, Lyft has adduced numerous reasons indicating that its prior operations were

conducted based on genuine uncertainty regarding the authority of the Commission to regulate the originally proposed service.

E. Lyft's Insurance Policies are Adequate for the Proposed Service

1. Overview

As previously stated, Lyft is proposing to offer new and innovative TNC service in Pennsylvania. For all of the reasons set forth in Section II.B, *supra*, the proposed service differs from traditional motor carrier service, but under the current regulatory structure in Pennsylvania, must still be offered with insurance meeting the minimum coverage levels set forth in Sections 32.11 and 41.21 of the Commission's Regulations. 52 Pa. Code §§ 32.11, 41.21. Lyft originally proposed to meet the Commission's insurance requirements with an excess liability policy providing drop-down coverage in the event that a driver using the Lyft platform experienced an accident and the driver's personal policy denied coverage or was inadequate to cover the value of the claim. *See* Lyft Exhibit I-A, Redline, pp. 2, 4. Lyft now proposes to satisfy and exceed the Commission's insurance requirements by offering the following insurance policies:

- (1) **\$1 million of liability coverage per incident. ("Auto Liability")**
Lyft maintains liability insurance, primary to a driver's personal auto insurance and excess to any commercial insurance carried by a driver, in the amount of \$1 million to cover a driver's liability for bodily injury, death or property damage, which far exceeds the Commission's minimum requirement of \$35,000. The terms and conditions for this policy provide that this coverage will apply from the time a driver accepts a trip request through the App until the completion of a trip. This coverage additionally includes 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. This policy protects drivers and passengers using Lyft's platform and third parties when injured through an accident caused by the driver using Lyft. This policy also includes uninsured/underinsured motorist coverage of \$1 million per incident, which will apply if another motorist causes an accident with a driver's vehicle and does not carry adequate insurance.

- (2) **Contingent liability coverage between trips. ("Contingent Liability")** For circumstances where a driver using Lyft's platform is available on the Lyft platform, but between trips with passengers (prior to being matched), and the driver's personal policy is unavailable or declines coverage during such time, Lyft has procured a policy that covers liability up to \$50,000 per person for bodily injury, \$100,000 per accident, and \$25,000 for property damage.
- (3) **Contingent comprehensive/collision coverage. ("Comp & Collision")** Finally, for drivers carrying comprehensive and/or collision coverage on their personal policies, Lyft offers contingent comprehensive and/or collision coverage up to \$50,000 per occurrence with a \$2,500 deductible. The terms and conditions for this policy provide that this coverage will apply from the time a driver accepts a trip request through the App until the completion of a trip.

See Lyft Exhibit 1-A. As explained by Mr. Okpaku, Lyft developed these insurance policies in conjunction with its insurer, James River Insurance Company, to reflect the unique characteristics of its TNC service.¹⁴ If the Commission approves the Application, Lyft will request a Form E from James River in either the standard form or as modified by the Commission. *Id.* This commitment is sufficient to protect the interests of all parties as Pennsylvania law binds the insurance company to honor the commitments made in a Form E regardless of any contrary terms in an insurance policy. *See Insurance Corporation of New York v. Antrom*, 2008 WL 5614200, at *1 (Pa. Super. Dec. 3, 2008) (stating that by filing the Form E certification, "the insurer certifies to the Commission that it is providing coverage in accordance with the law, notwithstanding any potentially contrary terms contained in an individual policy of insurance").

Despite the legal force of the Form E required to be furnished by any certificated carrier, Protestants proceeded to scrutinize the insurance policies in an attempt to minimize and discredit the creative and highly appropriate policies proposed by Applicant. Despite the furor raised by Protestants on this issue, close examination of the policies will show that Lyft has developed a

¹⁴ James River has been rated "A-" by A.M. Best Co. since 2003. *See* <http://www.jamesriverins.com/about.aspx>

robust insurance plan fully consistent with Sections 32.11 and 41.12 of the Commission's Regulations.

At a basic level, Lyft's insurance policies covers the below "Periods":

| | | |
|----------|---|---|
| Period 1 | App On In Driver Mode + any activity (, <i>i.e.</i> grocery shopping) | Driver Personal Policy (if available) Contingent Liability |
| Period 2 | App On In Driver Mode + Match Notification | Primary Auto Liability |
| Period 3 | Passenger Pick-Up through Passenger Exit | Primary Auto Liability |

See Tr. 261-262. The Comp & Collision policy will also apply during Periods 2 and 3 if the driver has comprehensive and/or collision coverage on his personal auto policy. Additionally, the Auto Liability policy includes \$25,000 of personal injury coverage and \$10,000 of wage loss coverage as required under Section 32.11 of the Commission's Regulations. These policies are intended to provide coverage for drivers using the Lyft platform when they are engaged in providing transportation service using the platform. *See* Tr. 264. Accordingly, as soon as a driver is matched with a passenger, with the term "match" referring to acceptance of a ride request by the driver, Period 2 begins and the primary coverage under the Auto Liability policy becomes effective. Period 2 continues from the time the match occurs until the driver actually picks up the passenger, at which time Period 3 begins, with the primary coverage remaining effective throughout Period 2 and until the passenger exits the vehicle and concludes Period 3. *See id.*

2. Contested Issues

Generally, the coverage offered by Lyft during Periods 2 and 3 was acceptable to parties, as would be expected considering that Lyft offers coverage far in excess of Pennsylvania minimum \$35,000 commercial liability coverage. *See* 52 Pa. Code § 32.11. However the

Eastern Pennsylvania Taxicabs alleged that Lyft's policy does not "follow the vehicle" and offers what was termed "24/7" coverage. *See* Tr. 561. This argument rests on a fundamental misconception of Lyft's proposed service. The Eastern Pennsylvania Taxicabs believe that the vehicles used in conjunction with the Lyft platform are used more for commercial use than personal use. *See Id.* Mr. Okpaku addressed this mistaken assumption in the below Q&A:

Q. When you said your vehicles – why not have an insurance policy that simply covers the vehicle 24/7 like most commercial policies?

A. That would completely misunderstand the nature of the Lyft application. We're talking about people who are using their personal vehicles, and on average, the last time we checked, about 70 percent or slightly less of the people on the Lyft platform nationwide do this maybe 15 hours a week or less. So they're using their own vehicles for a majority of the time in a personal capacity. Commercial insurance doesn't make sense for that type of usage...

Q. When you say it doesn't make sense, you mean from a cost standpoint?

A. Well, from a cost standpoint, but from a logic standpoint. If most of the time this vehicle is not a commercial vehicle, why would you get 24/7 commercial insurance? Most of the time it's a personal vehicle. That's the whole purpose of the Lyft app is if someone wants to use their personal vehicle [for commercial service] for however long they want to use it, our insurance is going to cover that period of time.

Tr. 321-322. Mr. Okpaku's testimony crystallizes the fundamental objective of Lyft's insurance policies. The policies differ from standard motor carrier policies not because Lyft is attempting to cut corners, but because the nature of the service demands a more contoured policy in order to properly cover the period in which a driver's vehicle is engaged in TNC service without duplicating resources or creating confusing overlapping coverages between Lyft and the driver's personal insurer. *Id.* Therefore, Lyft's Auto Liability policy establishes the clear line where the driver is engaged in transportation service. *See* Tr. 261-262.

The more contested element of Lyft's insurance policy is the Contingent Liability policy offered during Period 1. The Insurance Federation argued that Lyft should offer primary

coverage during Period 1, but failed to set forth any reasonable basis for the claim. Tr. 460. First, the Insurance Federation alleges that the "PUC Code" does not contemplate contingent policies. *Id.* This statement is entirely baseless. The Commission's Regulations establish minimum coverage limits and are silent as to whether the policy is primary, excess, or contingent. *See* 52 Pa. Code § 32.11. Depending on the circumstances, the PUC has discretion to approve a contingent policy provided that the coverage minimums are satisfied. *Id.*; *see also* 52 Pa. Code § 32.15 (allowing motor carriers to meet the minimum Section 32.11 requirements through self-insurance programs specifically permitted to be secured by excess insurance coverage).

The Insurance Federation also suggests that drivers using the platform are at risk during Period 1 because they are incentivized to "troll" for rides in the same manner as taxicabs, which Mr. Okpaku appropriately addresses by clarifying that drivers using the Lyft platform do not circle around like taxicabs. Tr. 428-429. Mr. Okpaku described how drivers using the Lyft platform can be available to provide service but have no mechanism for actively pursuing riders, stating:

I disagree with the characterization in stage one that the driver is soliciting rides. A driver can't solicit rides. They have no mechanism to do that. A driver is available to accept a ride. But I do agree that the app is open and that there's no ride that's yet to be requested for the definition of stage one in this.

Tr. 384. Moreover, offering primary coverage during Period 1, particularly at levels exceeding the state minimum, would invite fraud and misuse, as described by Mr. Okpaku:

That issue has been discussed at times as to whether the period one policy should be a primary policy. The problem with that is that you would basically be encouraging people to drive with the Lyft app on at all times, even if they had no inclination of ever giving a ride, because you would be covered by a policy that's frankly, probably better than the driver's own policy that the driver doesn't have to pay for, so you would basically be inviting a moral hazard if you were to require the period one insurance to be primary at all times. There's a clear incentive for

people to drive with the app on even if they have no intention of ever giving a ride on the Lyft platform.

Tr. 266. Although the Insurance Federation attempted to challenge Mr. Okpaku's claims by alleging that he has no empirical evidence indicating what kind of insurance policies the public in Pennsylvania purchases, Mr. Okpaku capably informed the court that his statement was based on the Pennsylvania minimum coverage amounts and the general truth that people do not seek to purchase \$1 million personal auto liability policies, nor do personal insurers provide such levels of coverage. *See* Tr. 371.

Essentially, Mr. Okpaku states that the conception of Period 1 as a commercial engagement is a misnomer. Because the driver can receive rides anytime his app is open and in driver mode, there is no need or benefit to be gained from driving around looking for street hails. *See* Tr. 301, 384. The truth of the matter, that drivers are not engaged in transportation service during Period 1, is further evidenced by the fact no drivers have filed claims for activities occurring during Period 1 since Lyft began operating in Pennsylvania. *See* Tr. 264; Insurance Federation Exhibit 4, Q.7. Because drivers are not actively using the Lyft platform during Period 1, the primary policies offered for Periods 2 and 3 fully cover the driver's activity with Lyft, while the *Contingent Liability* policy provides an appropriate backstop to address circumstances where a driver's personal coverage declines coverage during Period 1 or is otherwise unavailable.

Both the Insurance Federation and the Eastern Pennsylvania Taxicabs critique the feasibility of the coverage offered by James River, specifically suggesting that the risks are unquantifiable and intimating that James River (an A.M. Best "A-" rated surplus lines insurer) "cannot fully understand the risk they are about to write." Tr. 527. Specifically, through testimony from GB Group, LLC, a claims administration and risk management firm, the Eastern Pennsylvania Taxicabs raised questions regarding whether James River had properly accounted

for claims "incurred but not reported" or "IBNR," *i.e.*, the potential for future claims that were not reported in a timely fashion.

These concerns amount to baseless speculation driven by competitive interests. James River is currently market leader in developing insurance products for the TNC industry. Without James River's innovative policies, Lyft and other TNCs could be forced to rely on more standard policies from the Insurance Federation's members and organizations like GB Group, LLC – policies which would not adequately cover TNC activity given that they did not contemplate such activity when they were written. *See* Tr. 480 (confirming that James River and Insurance Federation members are "competitors in the market"). The influence of both entities' competitive interests may have incentivized witnesses for the Insurance Federation and GB Group LLC (on behalf of the Eastern Pennsylvania Taxicabs) to engage in widespread speculation about unsupported hypotheticals.

As an example, Mr. Gene Brodsky of GB Group LLC offered testimony about the importance of IBNR risk management practices after discussing the irrelevant bankruptcy proceedings Ocean Risk Retention Group and "Ulico," two allegedly insolvent insurance carriers that used to service the commercial auto industry in Philadelphia. Tr. 517-518. Although, neither company is affiliated with James River, Mr. Brodsky expressed his opinion that both companies underestimated their obligations. *Id.* Mr. Brodsky then proceeded to discuss the necessity for an insurance company to put aside resources to account for IBNR, which, in the context of his testimony might suggest that IBNR is somehow related to a threat of bankruptcy. *Id.* However, responses to cross-examination indicate that Mr. Brodsky used IBNR as a fear tactic to further the above-described agenda of discrediting the innovative insurance policy developed by James River:

Q. You talked a lot about, I think you used the term, incurred but not reported claims?

A. Okay.

Q. I believe you referred to that as a situation where there may be an accident that is not reported to an insurance company?

A. Yes, that's what the term stands for essentially, the accidents occurred but were not yet reported.

...

Q. This is an issue that every insurance company has to address?

A. Yes, every insurance company has to determine what their incurred but not reported exposure is. Their rate is known throughout the industry to determine what normal rates are for that.

Q. Right, so any time you have any kind of new business venture that was not previously in existence, that would be a concern or an issue?

A. It's not just the commercial. In personal lines and the homeowner lines of business, you always have the exposure of the incurred claims that were not reported yet. Everyone in business has different rates.

Q. Are you suggesting that James River has not considered these issues?

A. I didn't say that.

See Tr. 555-556. IBNR is one of many risks that any insurance company must consider when writing policies and was surely considered by James River in its underwriting. Mr. Brodsky provided absolutely no evidence that James River, a surplus lines company specializing in writing policies for unique activities, failed to account for such risks. *See id.* at 556.

Many of the Insurance Federation's claims are similarly unfounded. Like Mr. Brodsky, the Insurance Federation appears to criticize the legitimacy of the James River policies, stating that the insurer cannot properly estimate its risk because the insurer in this case is not familiarized with the individual drivers. *See* Tr. 527. Yet, the Insurance Federation readily

admits that "Lyft went to the surplus lines market, because there wasn't a product in the admitted market that fit their needs, and that's why, [omitted] it's been tailored to their needs, presumably." Tr. 482. The Commission should assign no weight to speculate biased and unsupported allegations that James River has underwritten claims that cannot be estimated.

The Insurance Federation did raise an important question related to the applicability of Lyft's primary coverage under Lyft's Auto Liability policy to vehicles used in conjunction with the platform. The Auto Liability policy references several defined terms that collectively attach coverage to vehicles used in conjunction with the platform. The multiple defined terms are necessary to customize the coverage to apply to vehicles used with the platform. The below table summarizes the applicable terms:

| Term | Definition | Location in Insurance Federation Exhibit 3 Page Title (Serial No.) |
|---|---|---|
| Named Insured | Lyft, Inc. | Business Auto Declarations (JA2001US 09-12) |
| You | Named Insured | Business Auto Coverage Form (JA4002US 01-14) |
| Insured | You for any covered "auto" | Business Auto Coverage Form (JA4002US 01-14) |
| Covered "Auto" (Symbol 10) | Private passenger auto being "operated by a Named Operator" and used by the "Named Operator logged and recorded acceptance in the Lyft Application to transport passenger(s) and the Named Operator is: 1) En route to pick up that passenger(s), or 2) Transporting that passenger(s) to their destination." | Covered Auto Designation Symbol (CA 99 54 07 97) (This Endorsement modifies the Section 1 of the Business Auto Coverage Form) |
| Designated Named Operators | Drivers who have entered into a contract with one or more of the Named Insured prior to the time of the "accident." | Limitation of Coverage to Designated Named Operator(s) (JA 53 02US 09 12) (This Endorsement modifies Section 1 of the Business Auto Coverage Form) |
| Primary Coverage for Designated Named Operators | Designated Named Operators listed in the Schedule of endorsement JA5302US-0912 are "insureds" provided such drivers: 1) Are using a covered "auto" you don't own, hire, or borrow in your business of personal affairs; and 2) Have entered into a contract with one or more Named Insureds prior to the time of the "accident." Coverage provided for Designated Named | Policy Change No. 19 (IL1201 04-03) (This Endorsement modifies Section II – "Liability Coverage, A.1 Who is an Insured" of the Business Auto Coverage Form) |

| | | |
|--|---|--|
| | Operators by this endorsement is primary with respect to any; 1) personal auto insurance policy that lists the Designated Named Operator as an insured; and 2) personal auto insurance policy that lists the "auto" drive by the Designated Named Operate as a covered auto." | |
|--|---|--|

The above definitions clarify that Lyft (the Named Insured), provides primary auto liability coverage for Designated Named Insureds when they are using a Covered Auto (which is defined to cover use during Periods 2 and 3). The issue identified by the Insurance Federation relates to a clause titled "Other Insurance" which is also located in Section III.B.4 of the Business Auto Coverage Form. Read independently, the "Other Insurance" clause appears to limit primary coverage to vehicles owned by the Named Insured. *See Tr. 506; see also Insurance Federation Exhibit No. 3, Business Auto Coverage Form, Section III.B.4.*

To address the apparent inconsistency, Lyft Witness Kate Sampson, Vice-President of Insurance Solutions, offered brief Rebuttal Testimony to clarify the application of Endorsement No. 19 and the Other Insurance Clause in the Business Auto Coverage Form. Ms. Sampson clarified that Endorsement No. 19 "define[s] the treatment as on a primary basis for those drivers and their autos," thereby addressing the unfounded concerns raised with regard to the Other Insurance clause. *See Tr. 572.* This is the only reasonable reading of the policy as Endorsement 19 was signed into effect on August 1, 2014.¹⁵

As summarized above, Lyft has provided carefully designed insurance policies offering up \$1 million of primary coverage during periods where drivers are using their vehicles in connection with the Lyft platform (Periods 2-3). Additionally, as an added protection, Lyft offers up to \$50,000/\$100,000/\$25,000 of Contingent Liability coverage, which will apply

¹⁵ To the extent necessary, Lyft is willing to contact James River and request an amendment to Endorsement 19 to clarify that the Endorsement controls over any potentially inconsistent language in the Other Insurance clause set forth in Section III.B.4 of the Business Auto Coverage Form.

during Period 1 to the extent a driver's personal coverage declines coverage or is otherwise unavailable. These policies are fully consistent with the Commission's Regulations and the Application should be approved subject to receipt of a Form E evidencing the above coverages.

F. The Protestants Have Not Sustained Their Burden of Showing that Approval of the Application Would Endanger or Impair Existing Carriers.

As noted earlier, introduction of new and innovative service often meets vigorous opposition from territorial incumbents. Unfortunately, this is exactly the posture of this case as the discussions with Protestants are governed by fierce resistance to change and unprogressive inertia. However, despite numerous *ad hominem* attacks upon Applicant and the TNC industry in general, Protestants failed to carry their burden of showing that approval of the Application would endanger or impair their existing carrier businesses.

It is well established that a protestant's burden in this regard is a heavy one. As the Commission aptly explained in *Blue Bird*:

To prevent the Commission's approval of an application, existing common carriers/protestants must carry a heavy burden of proof under subsection 41.14(c); they must show that the entry of a new carrier into the transportation field would endanger or impair their existing operations to such an extent that, on balance, the granting of the requested authority would contravene the public interest.

Both Pennsylvania appellate courts and the Commission have repeatedly advised that "[n]o carrier has a right to be granted freedom from competition." The existence of adequate service by extant carriers does not, by itself, preclude the granting of a certificate to an applicant. Thus, the mere potential for diversion of traffic volume from existing carriers to an applicant is insufficient to sustain the protesting carriers' burden of proof under subsection 41.14(c). In some instances, an increase in competition will tend to improve the service and efficiency of other carriers in the market.

Only the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c).

72 Pa.P.U.C. at 286 (citations omitted). See also *Re Samuel J. Lansberry, Inc.*, 71 Pa.P.U.C. 23, 37 (1989) ("[C]onsonant with 52 Pa. Code § 41.14(c), the burden on Protestants wishing to

preclude or restrict the entry of new carriers is quite heavy, and mere diversion of traffic volume is not sufficient to satisfy the burden of proof.").

JB Taxi and the Eastern Pennsylvania Taxicabs cannot possibly sustain their burden of showing that approval of Lyft's Application would harm their existing services. JB Taxi holds no operating authority in Allegheny County and yet remains eligible to Protest this Application despite Applicant filing both Preliminary Objections and a Petition for Interlocutory Review challenging JB Taxi's standing. *See Lyft Preliminary Objection to JB Taxi*, p. 1. Similarly, of the Eastern Pennsylvania Taxicabs, only one limousine company, Executive Transportation, holds any authority in Allegheny County. As no witness from Executive Transportation appeared at any of the three evidentiary proceedings, there is no evidence on the record from any carrier with authority to operate in Allegheny County. Neither JB Taxi nor the Eastern Pennsylvania Taxicabs should be permitted to continue protesting this Application.

In the event that the ALJs or the Commission continue to permit JB Taxi and the Eastern Pennsylvania Taxicabs to continue to protest this Application, Lyft submits that neither company established any likelihood of harm to their existing service. Rather, they lobby several criticisms at the business model employed by Lyft to operate its TNC service. For example, the Eastern Pennsylvania Taxicabs suggest that Lyft should be required to insure and mark its vehicles in the same manner as a taxi company. Tr. 548. This reflects the recurring theme throughout the testimony from both JB Taxi and the Eastern Pennsylvania Taxicabs, who essentially request that the PUC regulated TNCs without variation from the way taxis are regulated. *See* Tr. 89-90. However, as discussed in Sections II.B.2 and II.B.4, *supra*, Lyft has proposed to provide a distinct service for which the Commission should apply permit deviances from taxicab

regulations provided that the proposals set forth by Applicant preserve the basic requirement of safety for the public.

Similarly, the Eastern Pennsylvania Taxicabs attempt to analogize Lyft's proposed service to a gypsy cab, stating that "if you provide a vehicle...that has no mandatory expensive commercial insurance requirements which provides for financial responsibility in case of accident, if you have no markings on the vehicle, no painting requirements, no inspection requirements...of course it underbids and creates unfairness in the marketplace." *See* Tr. 102. This comment contradicts the entire purpose of this proceeding, through which Lyft submits its TNC service to PUC regulation, through which Lyft anticipates mandated compliance with certain insurance requirements, distinctive vehicle marking, and vehicle inspection requirements. *See* Lyft Exhibit 1-A.

Finally, in the most bizarre of turns, the Eastern Pennsylvania Taxicabs suggest that their service is better and more efficient than Lyft's. In comparing the Lyft platform to a "215 Get a Cab" application used by the Eastern Pennsylvania Taxicabs, a taxicab witness boasted that "So far as providing the delivery of the vehicle to consumers, to customer, which in particularly call for this type of service, we are much faster, much more efficient." Tr. 103. As stated above, all of this testimony relates to Philadelphia and is entirely irrelevant to this proceeding, but Lyft would otherwise welcome the competition and the continued innovation that would undoubtedly develop.

Along the same lines, JB Taxi appears to be less concerned with its existing service, which again is not offered in Allegheny County, and more concerned with the terms and conditions published to Lyft's website. Specifically, JB Taxi raised concerns regarding whether users of Lyft's platform would, *inter alia*, be subject to a binding arbitration process, indemnity

provisions, additional "damage fee" set forth in the terms and conditions, or waive any right to refunds. *See* Tr. 341-345. These concerns are wholly misplaced and should be disregarded. The terms and conditions published to Lyft's website were not drafted to specifically apply to the service offered in Pennsylvania. As indicated by Mr. Okpaku, Applicant operates in numerous markets across the country. *See* Tr. 234. While certain provisions in the terms and conditions may be modified based on experiences in different jurisdictions, Applicant has also clarified that "Applicant and users of Applicant's software or services are subject to applicable Orders and Regulations of the Pennsylvania Public Utility Commission." *See* JB Taxi Exhibit 1, Response to Q.2. Additionally, the Disclaimer section in the Lyft terms and conditions states that users "may have other rights that vary from state to state. *See* JB Taxi Exhibit 1, subheading "Disclaimers." Lyft has very clearly and publicly submitted to the PUC's regulatory authority and would conduct regulated business in conformance with applicable laws and regulations.

In addressing many of the extraneous issues raised by two taxicab companies (neither of which offered any evidence relevant to Allegheny County), Lyft concurs fully with comments submitted to the Commission's En Banc hearing by Two Men and a Truck, a highly successful moving business operating in the Pittsburgh area. *See Testimony of Dorothy Coll, Two Men and a Truck, Pennsylvania Public Utility Commission En Banc Transportation Hearing, Docket No. M-2014-2431451.* In pertinent party, Ms. Coll stated:

In 2004, my husband and I purchased a TWO MEN AND A TRUCK franchise to be located in Allegheny County. We applied to the PUC for authority, and we were protested by 11 other moving companies. Our protesters hired two attorneys to represent them and share legal fees. We hired an attorney and went before an Administrative Trial Judge for the PUC.

After four days of hearings spread over a four month period, the Administrative Law Judge denied our application on the basis that we did not show adequate "need." The hearing transcript is over 1,000 pages long, and the briefs are over 200 pages. We then purchased an existing authority for \$30,000, and opened our

doors. This year, nine years later, we will have gross sales of over 3.5 million dollars. Not bad for a company that was not needed by the public!

After paying legal fees of \$100,000, we purchased an authority or \$30,000 that limited us to work only in Allegheny County. After two years, we filed again for more rights in surrounding counties and all points PA. Four companies protested, and we prepared to go to court again. Eventually, we settled with the protesters by promising to not file another service expansion application for three years if we settled for all points PA." The protesters then dropped their opposition. In any other industry, this would be collusion! Four years later, in January of 2012, we again petitioned for rights in all the surrounding counties of Allegheny and were protested by eight companies. And we were back in a court room. This time we were granted authority in four for the five counties that we petitioned. Again, we were denied on the basis of not showing need in Washington County.

Id. Lyft would encourage the Commission to take measures to ensure that future Applicants are compelled to address only concerns of bonafide Protestants.

G. The Information Submitted in Response to the July 31, 2014, Interim Order is Proprietary Information.

The information provided in response to the July 31, 2014 Interim Order is proprietary and should be protected from public disclosure by the Commission. The Commission is authorized by statute to restrict public access to documents containing trade secrets or proprietary information and has developed Regulations to determine when such relief shall be granted. As set forth in detail below, the trip data furnished by Lyft meets the criteria for proprietary treatment and therefore be made available solely for Commission review, without public access.

The Commission has previously restricted information to data provided by regulated entities in competitive industries. Previously, the Commission granted requests from several Electric Generation Suppliers ("EGSs") to submit annual sales and revenue data under seal. The EGSs alleged that submission of the sales and revenue data, while required by Commission Regulations, could:

enable competitors to discern valuable competitive information concerning sales prices and corporate strategy. The combined information could allow a competitor to calculate the company's average price per kWh. Access to this information might afford a competitor an unfair advantage.

In re Exelon Energy, 94 Pa.P.U.C. 382 (Pa.P.U.C. 2000). The Commission agreed with the EGSs and agreed to restrict release of the revenue data, finding that release of both would enable competitors to calculate pricing information for the EGSs. *Id.* The Commission's objective in that proceeding, stated as a "balancing of the public's interest to free and open access of data that will aid in determining how the competitive process is working and the EGSs' potential harm resulting from disclosure of data that would allow competitors a mechanism to calculate proprietary pricing information." is instructive for purposes of this proceeding.

Similar to the data at issue in *Exelon*, the provided response to the ALJs' July 31, 2014 Interim Order is proprietary, because it could be used by Lyft's current and prospective competitors to model and forecast Lyft's activities in relevant markets. Lyft and its competitors are not traditional transportation companies, but are highly sophisticated technology companies providing technology services that facilitate consumer transportation. To analyze market activity and growth forecasts, Lyft utilizes data-intensive market analytics based on proprietary usage data available only through its platform, such as the number of rides provided in a particular market or the concentration of pick-ups and drop-offs in specific segments of that market. Such data would be extremely valuable to Lyft's primary competitor, particularly in light of recent aggressive tactics used to gain market share in the TNC industry. While the Commission may claim a right to review the data in order to further its regulatory obligations under the Public Utility Code, the statute also empowers the Commission with authority to protect documents containing trade secret or proprietary information from public release. *See* 66 Pa. C.S. § 335(d).

Consistent with its authority under Section 335 of the Public Utility Code, the Commission has developed a five-step analysis to determine whether proprietary treatment should be afforded to information submitted to the Commission. The factors are as follows:

- (1) The extent to which the disclosure would cause unfair economic or competitive damage;
- (2) The extent to which the information is known by others and used in similar activities;
- (3) The worth or value of the information to the participant and to the participant's competitors;
- (4) The degree of difficulty and cost of developing the information; and,
- (5) Other statutes or regulations dealing specifically with disclosure of the information.

Sec 52 Pa. Code § 5.423(a). Application of the Section 5.423 analysis to Applicant's request weights strongly in favor of restricting access to the trip data. As described above, disclosure would certainly cause unfair economic or competitive damage. Applicant is one of two market leaders in a fiercely competitive and rapidly expanding TNC industry. Disclosure of the data would not be ignored by Applicant's competitors. For example, once a competitor knows the volume of Applicant's business in a particular market, they can use that data to reassess their resource deployment in the area. The data could also be used towards more technical applications, as the number of rides in a particular market could service as the building block to replicate Applicant's sales patterns by adding more publicly available data to the mode. (i.e., demographics, income, education, etc.).

The remaining factors are similarly compelling. Applicant has not previously disclosed trip data prior to responding to the July 31, 2014 Interim Order. The presence of the data in even a protected public file is concerning to Applicant, but Applicant desires to offer its service in Pennsylvania and is therefore seeking to comply with all PUC's directives. Applicant would not

have disclosed the data for any other purpose and strongly encourages the Commission to grant proprietary treatment for the trip data.

The third factor is indistinguishable from the first under Applicant's circumstances. As for the fourth factor, it would be impossible for any entity to develop the trip data. It is not possible to track all of the vehicles used in conjunction with Applicant's platform and Applicant does not maintain such data in any publicly accessible forum.

The fifth factor also favors grant proprietary treatment for the trip data. The Commission's Regulations currently requires call or demand taxis and limousines to maintain trip logs and furnish them upon demand. 52 Pa. Code §§ 29.313, 29.335. However, as addressed in Section II.B, *supra*, call or demand taxis and limousines are not TNCs and do not face the same market pressures. Additionally, the Commission's Regulations requiring call or demand taxis and limousines to maintain and furnish trip log data do not require them to file the information with the Commission's Secretary. Accordingly, the Regulations indicate only that the Commission shall be granted access to such data, which does not impede proprietary treatment for such information.

Applicant further adds that the limited scope of the requested protection favors granting proprietary treatment of the trip data. Three public evidentiary hearings were held in this matter, generating three transcripts totaling 564 pages. Of the 564 total pages, only 6 were sealed from public record, indicating that the least restrictive means of protecting the information was applied by the ALJs, consistent with Section 4.423 of the Commission's Regulations. 52 Pa. Code § 5.423.

For the above reasons, Applicant respectfully requests the ALJs and/or the Commission find the protection afforded by the Tentative Interim Order on Temporary Protective Order

should be affirmed on a permanent basis to avoid causing unnecessary and significant economic harm to Applicant.

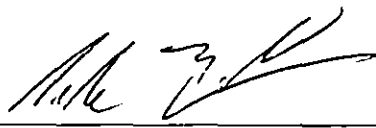
III. CONCLUSION

WHEREFORE, Lyft, Inc. respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Approve the Application and grant the requested authority to offer experimental Transportation Network Company Service in Allegheny County.
- (2) Grant any additional relief consistent with the above request and deemed to be in the public interest.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Dated: September 15, 2014

APPENDIX A

FINDINGS OF FACT

1. The founders of Lyft started the company to develop a way to encourage people to fill up empty seats in their cars and improve the efficiency of ground transportation. Tr. 235.
2. Lyft service is not a dispatch because the company does not instruct any particular driver to respond to any particular potential passenger. Tr. 236.
3. To use the Lyft platform as a driver, the individual must download the Lyft mobile application, submit personal information (including a date of birth, driver's license information, social security number), and complete the application process, including a background check, driver history check, vehicle inspection, and driver training program. Tr. 235, 268-270, 300, 305.
4. To use the Lyft platform as a passenger, the individual must download the Lyft mobile application and furnish personal information, including a credit card or bank-issued debit card for payment. Tr. 235, Tr. 300.
5. The only way for passengers to request rides using the Lyft platform is to turn on the platform or "app" and press the "request ride" button. Tr. 237.
6. Lyft rides cannot be prearranged in advance, rides are only available on-demand. Tr. 237.
7. Limiting the method of obtaining a ride to on-demand requests submitted through the platform improves efficiency by eliminating the incentive to waste resources by driving around an area and "trolling" for passengers. Tr. 237, 388 *cf.* Tr. 301.
8. Lyft passengers cannot select a specific type of vehicle or a specific driver. Tr. 238.
9. The Lyft platform monitors passenger and driver locations using GPS technology. Tr. 235-236.
10. After requesting a ride through the Lyft platform, a passenger is routed to the nearest available Lyft driver. Tr. 236.
11. If the driver accepts the ride, the driver is informed of the passenger's location via GPS. Tr. 236.
12. After the driver accepts the ride, the passenger receives, through the Lyft platform, a picture of the driver, a picture of the driver's car, and a picture of the license plate. Tr. 274.
13. For each ride, the passenger provides the driver with the destination. Tr. 274.

14. At the conclusion of the ride, a standard fare is generated based on GPS-tracked distance traveled (*i.e.* cost-per mile), a cost-per-minute charge, and a pick-up charge, subject to a minimum fare charge. Tr. 236, 324-326.
15. At times of high-demand, Lyft may raise prices by a multiplier, a practice known as "Prime Time Tips." Tr. 327.
16. The Prime Time Tips program is designed to incentivize drivers to turn on the app and remain available during time of high demand; all fare increases implemented during Prime Time Tips are 100% passed onto the driver. Tr. 275, 327.
17. If a passenger requests a ride during a period where Prime Time Tips is active, the passenger will receive a pop-up notice notifying the passenger that Prime Time Tips is in effect and disclosing the percentage increase from standard fares. The passenger must affirmatively click through the disclaimer in order to obtain a ride during a Prime Time Tip period. Tr. 275.
18. After completing a ride, a passenger has 24 hours to confirm payment, with no requirement to furnish payment at the point of sale. Tr. 236, 305.
19. Following payment confirmation, the passenger receives an electronic receipt containing the driver's first name, the pick-up and drop-off locations, the fare, a link to file a complaint with Lyft, and specifically for Pennsylvania users, contact information for submitting a complaint to the PUC. Tr. 27.
20. The option to obtain a ride without having to review, confirm, or submit a payment at the point of sale is a feature unavailable through apps used by traditional motor carriers. Tr. 305.
21. Lyft does not seek to use professional or commercially-licensed drivers, but intends for everyday people to sign-up as drivers. Tr. 237, Tr. 300.
22. A "non-professional" driver is a driver that offers rides through the platform as a means of supplemental income, but not as a means of full-time employment. Tr. 303.
23. Professional taxi drivers generally operate their vehicles on a full-time basis. Tr. 303.
24. The 31 verified statements submitted with the Application were obtained under the direction of Joseph Okpaku, Director of Public Policy for Lyft, Inc. Tr. 277.
25. Approximately 70% of drivers using the Lyft platform drive for Lyft less than 15 hours per week. Tr. 321.
26. Lyft uses a third-party vendor, Sterling BackCheck, to perform background and criminal checks. Tr. 293.

27. Lyft uses a third party vendor, American Driving Records, Inc., to perform driving record searches. Tr. 293.
28. New drivers using the Lyft platform must complete a driver training program consisting of a series of instructional videos and a "ride-along" completed with experienced Lyft drivers with excellent safety ratings, whom the company designates as "mentors." Tr. 356.
29. In addition to demonstrating excellent customer service and driving skills through consistently high ratings, mentors must view additional training videos. Tr. 356-359.
30. Lyft does not negotiate with transportation carriers, operate vehicles, assume custody of vehicles, or sell transportation services. Tr. 295.
31. Lyft provides a platform through which drivers and passengers can connect. Tr. 295.
32. Lyft restricts use of the platform for passengers or drivers violating safety protocols. Tr. 354.
33. The Lyft platform allows the company to remove a driver from service by remotely terminating access to the platform, without which the driver cannot respond to ride requests. Tr. 270-271.
34. Lyft will suspend a driver immediately for suspected violation of the company's zero tolerance drug and alcohol program. Tr. 270.
35. Lyft's rating system offers passengers and drivers an opportunity to submit a five-star rating of the respective driver or passenger for each ride. Tr. 271-272.
36. The rating system is a five-star system; ratings below five-star will prompt the user to answer questions to determine whether the lower rating was safety-related. Tr. 271-272.
37. Ratings invoking safety issues are automatically flagged and routed to the Trust and Safety team for immediate response. Tr. 271-272.
38. Lyft monitors narrative responses to its rating system to enforce the Company's anti-discrimination policy. Tr. 273.
39. Lyft also utilizes the GPS tracking technology embedded in the platform to monitor rides and determine whether driving patterns reflect discrimination towards particular neighborhoods or communities. Tr. 273.
40. Public feedback from passengers is an effective and important safety tool. Tr. 60.

41. Lyft offers primary insurance coverage in an amount up to \$1 million from the time a driver accepts a ride request through the platform or "app" until the latter of the time the passenger exits the vehicle or the driver turns off the platform or "app". Tr. 318.
42. A driver can keep the Lyft platform or "app" on while performing personal activities. Tr. 264, 384.
43. Drivers are not engaged in transportation service simply by turning the platform or "app" on. Tr. 264, 266, 384.
44. Drivers engage in transportation service by accepting a ride request through the platform or "app." Tr. 237.
45. Lyft drivers have access to a digital version of the insurance card evidencing Lyft's insurance coverage. Tr. 319.
46. Lyft collects a copy of each driver's insurance card to confirm that driver has personal liability coverage. Tr. 373.
47. The driver's personal insurance card includes the effective start and end dates of the driver's personal insurance coverage. Tr. 374.
48. Lyft sends reminders requesting updated insurance information approximately one month prior to expiration of each driver's personal insurance policy. Tr. 374.
49. Lyft's website includes instructions for drivers to follow in case of an accident, including furnishing the digital Lyft insurance certificate to police officers. Tr. 381.
50. The terms and conditions published to Lyft's website are not specific to individual service areas and include provisions requiring that the platform be used "consistent with any and all applicable laws and regulations." Tr. 355, JB Taxi Exhibit 2.
51. The terms and conditions have never been interpreted or applied to limit the applicability of a Lyft insurance policy. Tr. 405-407.
52. Ownership of a vehicle is not required to obtain an insurable interest in a vehicle. Tr. 566.
53. Lyft does not hire vehicles. Tr. 578.
54. Lyft has never operated in the City of Philadelphia. Tr. 177, 551.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. Applicant has the burden of proof in this proceeding and the duty to establish facts by a preponderance of the evidence. 66 Pa. C.S. § 332(a).
3. An applicant seeking authority to begin to offer, render, furnish, or supply intrastate carriage service to the public for compensation in this Commonwealth must obtain a certificate of public convenience from the Commission. 66 Pa. C.S. § 1101. A certificate will only be granted "if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a).
4. The proposed TNC service is not call or demand, limousine, paratransit, scheduled route service, or group and party service. 52 Pa. Code § 29.13.
5. The proposed TNC service is experimental service. 52 Pa. § 29.352.
6. The evidentiary criteria adopted by the Commission for deciding motor carrier applications, including applications for experimental service, are contained in Section 41.14 of the Commission's Regulations, 52 Pa. Code §41.14.
7. Applicant has sustained its burden. 52 Pa. Code §41.14.
8. Applicant has demonstrated that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code § 41.14(a).
9. Applicant has demonstrated that it possesses the technical and financial fitness to provide the proposed service. 52 Pa. Code § 41.14(b).
10. The evidence indicates that Applicant possesses the propensity to operate safely and lawfully. 52 Pa. Code § 41.14(b).
11. Applicant has demonstrated that it has sufficient capital, equipment, facilities, and other resources necessary to serve Allegheny County. 52 Pa. Code § 41.14(b)(1).
12. Applicant has demonstrated that it has sufficient technical expertise and experience to serve Allegheny County. 52 Pa. Code § 41.14(b)(2).
13. Applicant has demonstrated that it will be able to secure sufficient and continuous insurance coverage for " vehicles to be used or useful in the provision of experimental transportation network service." 52 Pa. Code § 41.14(b)(3).
14. Applicant has demonstrated that it 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). 52 Pa. Code § 41.14(b)(4).

15. Applicant and its drivers have never been convicted of a felony or crime of moral turpitude. 52 Pa. Code § 41.14(b)(6).
16. Protestants have not established that the entry of a new carrier offering experimental *transportation network service* would endanger or impair the operations of existing common carriers to an extent that, on the balance, the granting of authority would be contrary to the public interest. 52 Pa. Code § 41.14(c).

PROPOSED ORDERING PARAGRAPHS

THEREFORE,

IT IS ORDERED:

1. That the Application of Lyft, Inc. at Docket No. A-2014-2415045 is approved, granting the following right:

To begin to offer experimental transportation network service for passenger trips between to and/or from points within Allegheny County.

2. That the Protest of JB Taxi, LLC is denied.
3. That the Protest of Executive Transportation Co. is denied.
4. That the Protest of the Insurance Federation of Pennsylvania is denied.
5. That Applicant shall submit to the to the Commission:
 - a. *Form E evidence of insurance.*
 - b. A tariff establishing just and reasonable rates, consistent with the terms of service set forth in the Application.
6. That upon compliance with the requirements set forth in this Order, a certificate of public convenience be issued evidencing the Commission's approval of the right to operate.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FEDERAL EXPRESS OVERNIGHT DELIVERY

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Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 15th day of September, 2014, in Harrisburg, Pennsylvania.

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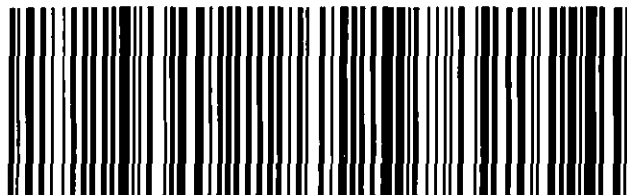
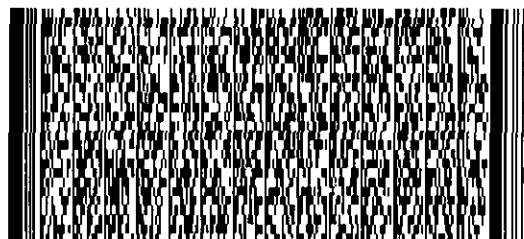
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