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September 23, 2014

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question 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 
Adeolu A. Bakare

Counsel to Lyft, Inc.

/lmc
Enclosure

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

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CERTIFICATE OF SERVICE

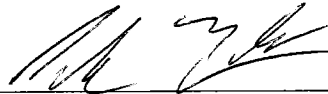
I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 23rd day of September, 2014, in Harrisburg, Pennsylvania.

**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 :

**PETITION OF LYFT, INC.
FOR INTERLOCUTORY REVIEW AND
ANSWER TO A MATERIAL QUESTION**

Pursuant to 52 Pa. Code § 5.302, Lyft, Inc. ("Lyft") files this Petition for Interlocutory Review and Answer to a Material Question ("Petition"). In support of its Petition, Lyft avers as follows:

I. Introduction and Background:

1. On April 3, 2014, Lyft filed an Application at Docket No. A-2014-2415045 ("Allegheny Application") requesting the issuance of a certificate of public convenience to operate as a Transportation Network Company ("TNC") and offer experimental service facilitating transportation between points in Allegheny County, Pennsylvania.¹

2. On July 31, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson issued an Interim Order ("*July 31 Interim Order*") at Docket No. A-2014-2415045 directing Lyft to furnish data relating to the rides provided to passengers via Lyft's mobile application platform. Specifically, the ALJs directed Lyft to furnish the following trip data:

¹ On April 3, 2014, Lyft also filed an Application at Docket No. A-2014-2415047 ("Statewide Application") requesting the issuance of a certificate of public convenience to operate as a TNC and offer service facilitating transportation throughout the Commonwealth of Pennsylvania.

- (1) The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
 - (a) From the initiation of Lyft's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Lyft);
 - (b) From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
 - (c) From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.

See July 31 Interim Order.

3. On August 29, 2014, after informally circulating copies of a draft Protective Order among parties to the proceeding, Lyft filed a Petition for Protective Order seeking to protect the trip data as highly confidential, proprietary information that constitutes trade secrets and should be protected from public disclosure.

4. On September 2, 2014, the ALJs issued an Interim Order on Motion for Protective Order ("*September 2 Interim Order*") denying Lyft's request to protect the data related to the rides provided to passengers via Lyft's mobile application platform.

5. On September 3, 2014, ALJs Long and Watson presided over evidentiary hearings in the above-captioned proceeding. At the evidentiary hearings, ALJs Long and Watson granted temporary protection of the trip data for purposes of the evidentiary hearing and the pending recommended decision in order to preserve Applicant's opportunity to Petition for Interlocutory Review of the *September 2 Interim Order*. The ALJs memorialized the grant of temporary protection in an Interim Order on Temporary Protective Order issued on September 10, 2014 ("*September 10 Interim Order*").

6. Accordingly, Lyft now seeks interlocutory review of the *September 2 Interim Order*.

II. Material Question, Need for Interlocutory Review, and Discussion:

7. From the *September 2 Interim Order*, the following material question arises: (1) Does the trip data of TNCs constitute proprietary information and/or a trade secret that must be restricted from public disclosure? The answer to this question is yes.

8. Interlocutory review of this question is necessary to prevent significant harm to Lyft. Public disclosure of the data related to the rides provided to passengers via Lyft's mobile application would reveal operational information that would not otherwise be provided to the public and would provide a competitive advantage to other TNCs.

9. In the September 2 Interim Order, the ALJs determined that:

[t]he information that we directed the Applicant to disclose is of the sort that all motor carriers are directed to submit to the Commission on a routine basis. These records are subject to inspection by the Commission. The Applicant's bald statement that trip data for transportation network companies is proprietary when it is clearly not for other motor carriers, does not outweigh the public interest in an open record in this proceeding.

September 2 Interim Order, p. 4. In making this determination, the ALJs evaluated Applicant's request for proprietary treatment of trip data solely within the context of the traditional motor carrier industry. This comparison severely understates the harm that disclosure of the trip data would impose upon Lyft, as it is a technology company operating within the sharing economy, which is highly competitive, dependent on data-driven market analytics, and more rapidly scalable than traditional motor carrier services. Further, the competitive impact of publishing trip data for TNCs is analogous to the competitive impact of publishing revenue data for other competitive electric supply services, for which the Commission has granted proprietary treatment.

10. For each of these reasons, TNC service is unlike the services provided by other motor carriers. Therefore, while the trip data Lyft seeks to protect may not be proprietary or trade

secret to other motor carriers, this data is proprietary and constitutes a trade secret for Lyft such that public release could lead to substantial harm. To preserve a vibrant TNC market in Pennsylvania, the Commission should reverse the *September 2 Interim Order* as necessary to grant proprietary treatment to the trip data submitted by Lyft in response to the *July 31 Interim Order*.

11. The Commission is authorized by statute to restrict public access to documents containing proprietary information or trade secrets and has developed Regulations to determine when such relief shall be granted. *See* 66 Pa. C.S. § 335; *see also* 52 Pa. Code § 4.423(a). As set forth in detail below, the trip data furnished by Lyft meets the criteria for classification as proprietary information and/or a trade secret and, therefore, should be made available solely for Commission review, without public access.

12. Under Pennsylvania law, the presumption of openness applicable to proceedings before the Commission is not immutable and remains subject to restriction where disclosure of specific information would harm the business interests of a party. *See* 66 Pa. C.S. § 335(d); *see also Pennsylvania Public Utility Commission v. Bell Atlantic Pennsylvania, Inc., et al.*, slip op., 86 Pa.P.U.C. 208 (1996), p. 7 ("*Bell Atlantic*"). 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, slip op., 94 Pa.P.U.C. 382 (Pa.P.U.C. 2000), pp. 2-3 ("*Exelon*"). The Commission concurred with the EGSs and agreed to restrict release of the revenue data, finding

that release of both revenue and sales data would enable competitors to calculate pricing information for the EGSs. *Id.* The Commission's objective in that proceeding, articulated as the necessity to "[balance] the public's interest to free and open access of data...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. *Id.*

13. The Commission granted similar relief in *Bell Atlantic*, where a telecommunications company sought interlocutory review of an ALJ's Interim Order denying proprietary treatment for a cost study prepared by the company. *Bell Atlantic*, pp. 1-2. In this case, the ALJ initially held that the public's interest in disclosure outweighed the company's interest in protecting the information because disclosure was contemplated by a provision in the Federal Telecommunications Act of 1996 ("Communications Act") directing the company to conduct good faith negotiations for system interconnections with competitors. *Id.* at 7. The Commission disagreed, finding that nothing in the Communications Act compelled the company to disclose proprietary information for negotiations without a protective order and further confirming that effective regulation of public utilities includes balancing the public's interest in disclosure against the company's interest in preserving the competitive status quo. *Id.* Specifically, the Commission observed that:

...the court's [sic] have recognized that records may be closed in part or in full to the public in order to protect the private interest of a party which may include proprietary interests in trade secrets or other commercial information.

Id. In both *Bell Atlantic* and the previously discussed *Exelon* proceeding, the Commission recognized that the impact of its regulatory authority upon competitive enterprises can support restricting public access to records where disclosure would provide a competitive advantage to certain entities or otherwise shift the competitive status quo.

14. Similar to the circumstances addressed in *Exelon* and *Bell Atlantic*, the provided responses to the ALJs' *July 31 Interim Order* are proprietary and/or a trade secret because the information could be used by Lyft's current and prospective competitors to gain a competitive advantage in the TNC industry. Contrary to the findings in the *September 2 Interim Order*, Lyft and its competitors are not traditional transportation companies, but are highly sophisticated technology companies providing technology services that facilitate consumer transportation. Unlike established traditional motor carrier services, the TNC industry is in the midst of a delicate growth phase. To preserve healthy competition and maximize consumer value, the Commission should refrain from unintentionally shifting the competitive position of the individual TNCs.

15. As more fully set forth in the attached Affidavit of Joseph Okpaku, Director of Public Policy for Lyft, disclosure of the trip data provided in response to the *July 31 Interim Order* would materially erode Lyft's competitive position in the Pittsburgh market and potentially beyond. *See* Appendix A. To analyze market activity and growth forecasts for new markets such as Pittsburgh, Lyft utilizes data-intensive market analytics based on proprietary usage data available only through its platform. *See id.* The data used for such analysis includes the number of rides provided in a particular market. *See id.* This information, which may not be proprietary for more traditional motor carriers, is closely protected by Lyft and extremely valuable to competitors seeking to analyze Lyft's market penetration, model the company's ability to scale up its services in new markets, and develop counter-measures to slow Lyft's growth or discourage drivers from using Lyft's platform. *See* Appendix A. For existing and potential competitors seeking to reduce Lyft's market share in Pennsylvania and other states, the trip data would be just

as valuable of an indicator of Lyft's internal operations and competitive strategies as the revenue data at issue in *Exelon*. See *Exelon*, pp. 2-3.

16. For these reasons, data confirming the total number of rides provided in the Pittsburgh market through Lyft's platform during the periods set forth in the *July 31 Interim Order* would be extremely valuable to Lyft's primary competitors. While the Commission may desire to exercise its 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 proprietary information or trade secrets from public release. See 66 Pa. C.S. § 335(d).

17. 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.

See 52 Pa. Code § 5.423(a). Application of the Section 5.423(a) analysis to Lyft's request weighs strongly in favor of restricting access to the trip data. Although publication of Lyft's trip data may seem innocuous when considered within the paradigm of traditional motor carrier services, the disclosure would actually cause unfair economic and/or competitive damage due to the sophisticated technological resources available to leading TNCs and the nascent phase of the industry. Lyft is one of a handful of market leaders in a fiercely competitive and rapidly

expanding TNC industry. Lyft's competitors would not ignore disclosure of the data. For example, once a competitor knows the volume of Lyft's business in a particular market, they can use that data to reassess their resource deployment in the area. *See Appendix A.* The data could also be used towards more technical applications, as the number of rides in a particular market could serve as the building block to replicate Lyft's sales patterns by adding more publicly available data to the model (*i.e.*, demographics, income, education, etc.). *See id.*

18. Additionally, public disclosure of the trip data at this early phase of the TNC industry would cause irreparable damage that could not be retroactively cured. As adduced by the Commission in *Bell Atlantic*, the Commission's administration of its regulatory authority over jurisdictional services should be competitively neutral. *See Bell Atlantic*, p. 7. Public disclosure of the Lyft trip data would achieve the opposite result and provide Lyft's competitors, both within Pennsylvania and across the state, with valuable data chronicling and quantifying Lyft's ramp-up process in new markets. *See Appendix A.* Such a development would impose substantial economic and competitive harm upon Lyft and shift the competitive status quo in favor of Lyft's competitors.

19. The remaining factors are similarly compelling. Applicant has not previously disclosed trip data prior to responding to the *July 31 Interim Order*. The presence of the data in even a protected public file raises serious disclosure concerns due to the possibility of human error or other unintended disclosure, but Lyft desires to offer its service in Pennsylvania and is therefore seeking to comply with the *July 31 Interim Order*. By contrast, another TNC subject to the same data request has resisted any disclosure of the requested trip data, alleging that the Commission is not equipped to afford adequate protection to the data. *See Application of Rasier PA-LLC*,

Brief of Rasier PA-LLC Opposing Motion to Dismiss Application, Docket No. A-2014-2416127 (Sept. 12, 2014) ("*Uber Trip Ride Brief*").

20. In opposing a Motion to Dismiss its application for TNC service for failure to comply with the request to furnish trip data, Rasier PA-LLC, a subsidiary of Uber Technologies Inc. (collectively "Uber") described the impact of disclosing the trip ride data as follows:

The trip data that is the subject of the *July 31 Interim Order* is information that Rasier-PA has spent considerable time and effort to collect. As such, it is a valuable asset that belongs to Rasier-PA, the disclosure of which would diminish its market value. Particularly since data provided in response to the *July 31 Interim Order* would reveal the number of trips provided through the App in a very limited geographic area of Allegheny County over distinct relatively short time periods, it would be possible for Rasier-PA's competitors to determine the size of the business and how lucrative it is. For instance, disclosure of data collected about the number of rides provided through the App during a 4-week period in Allegheny County (June 5, 2014 through July 1, 2014)...would be very revealing about the success of this highly competitive business. If it ends up in the hands of competitors, it could be used as a basis for allocating their resources differently or changing their business models in a way that is injurious to Rasier-PA's business.

Uber Trip Ride Brief, pp. 6-7. Although Lyft shares the concerns expressed by Uber, Lyft, in good faith as an entity seeking to develop an appropriate regulatory structure for TNCs with the Commission, proceeded to furnish the data under a Temporary Protective Order rather than withhold any access to the data. Lyft would not have disclosed the data for any other purpose and strongly encourages the Commission to preserve the integrity of the regulatory process and grant proprietary treatment for the trip data.

21. The third factor is indistinguishable from the first under Lyft's circumstances. As for the fourth factor, it would be impossible for any other entity to develop the trip data. It is not possible to track all of the vehicles used in conjunction with Lyft's platform, Applicant does not maintain such data in any publicly accessible forum, and no other regulator in any market in which Applicant operates has required Applicant to make similar data available to the public.

22. The fifth factor also favors granting proprietary treatment for the trip data. The Commission's Regulations currently require 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 detail above, call or demand taxis and limousines are not TNCs and do not face the market pressures of a start-up technology-driven business model. 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. *See Exelon*, pp. 2-3 (Commission recognizing that its Regulations require annual submission of revenue data, but permitting EGSs to file the revenue data under seal due to competitive concerns). Just as the EGSs in *Exelon* furnished regulated records under seal, Lyft's obligation to maintain trip data would not impede granting proprietary treatment when such information is to be provided to the Commission. *See id*; *see also Bell Atlantic*, p. 7.

23. Lyft 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.

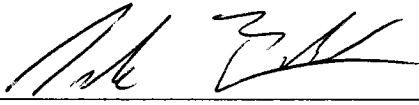
24. Finally, if for any reason the Commission denies proprietary treatment for the trip data furnished in response to the *July 31 Interim Order*, Lyft requests that the Commission restrict publication of the data as necessary to preserve the status quo pending potential exercise of Lyft's right to appeal the Commission's final determination. *See* 52 Pa. Code § 5.631.

III. CONCLUSION

WHEREFORE, Lyft, Inc. respectfully requests that this Honorable Commission undertake interlocutory review of the Interim Order, answer the material question in the positive, and grant Lyft, Inc.'s Petition for Protective Order as it relates to the trip data.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By  _____

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Counsel to Lyft, Inc.

Dated: September 23, 2014

APPENDIX A

AFFIDAVIT OF JOSEPH OKPAKU

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DIRECTOR OF PUBLIC POLICY, LYFT INC.

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

JOSEPH OKPAKU, being duly sworn according to law, deposes and says that he is Director of Public Policy for Lyft, Inc. ("Lyft" or "Company") and that in this capacity he is authorized to and does make this affidavit for the Company, that the Company has reviewed the data requests set forth in the Interim Order issued on July 31, 2014 at Docket No. A-2014-2415045 ("July 31 Interim Order") by Administrative Law Judges Mary D. Long and Jeffrey A. Watson, and submits that the requested trip data is proprietary and trade secret, such that disclosure of the information to the public would provide a competitive advantage to the Company's competitors. Mr. Okpaku further avers that the facts set forth in the Petition for Interlocutory Review and Answer to a Material Question and the facts further offered herein are true and correct to the best of his knowledge, information, and belief. Accordingly, Mr. Okpaku hereby certifies that public disclosure of the information provided in response to the *July 31 Interim Order* is proprietary and trade secret for the following reasons:

The *July 31 Interim Order* directed Lyft to furnish the following information to the Commission:

- (1) The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
 - (a) From the initiation of Lyft's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Lyft);

- (b) From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
- (c) From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.

See July 31 Interim Order. This information is proprietary and trade secret for Lyft due to the competitive and technology-driven qualities of the Transportation Network Company ("TNC") industry and the broader sharing economy. To understand the importance of such data to Lyft, it is critical to consider the circumstances faced by companies participating in the emerging sharing economy versus more traditional industries based on acquisition and control of capital-intensive physical assets. This distinction is important because disclosing internal market data provides more value to competitors in the sharing economy than it would for competitors in traditional lines of business.

For example, traditional motor carriers can establish strong market positions by investing in tangible assets such as the vehicles put in service. TNC are not traditional motor carries; rather, they are an internet-based sharing economy platform, like Airbnb and Craigslist, which do not own or operate any real estate assets, but instead offer platforms through which users can connect and share their real estate assets through rental arrangements. Similarly, Lyft and its TNC competitors rely heavily on participant resources rather than company-owned facilities. Just as an apartment owner could use either Craigslist or Airbnb to solicit potential tenants for the unit, a driver wishing to use a vehicle in conjunction with TNC service could select Lyft or another TNC service to connect with passengers. TNC companies cannot stake out a claimed territory by purchasing a large fleet of vehicles and establishing control over the physical assets, in a territory. Because each TNC relies upon the same supply of participant resources, *i.e.* personal cars operated in a particular market, the TNCs must continue to compete earnestly to attract drivers to use their respective platforms.

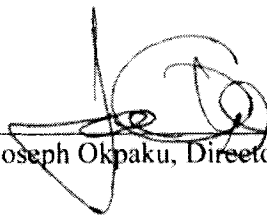
Publishing the trip data would negatively affect Lyft's competitive position because other TNCs would have an opportunity to measure Lyft's penetration of the Pittsburgh market and make informed decisions regarding the necessity to engage in activities designed to attract drivers currently using Lyft's platform to another TNC platform. Because the driver has no ties to the company other than downloading a free mobile app, the driver could easily switch from Lyft to a competitor TNC. Lyft's competitors would undoubtedly use the published trip data as a barometer to calibrate their marketing activities in the Pittsburgh market. Moreover, Lyft's competitors could extrapolate the Pittsburgh data and develop algorithms to model and estimate Lyft's growth rate in other potential markets, which would be used to anticipate and counter Lyft's strategies for attracting drivers in different markets.

These concerns are not theoretical. Participants in the TNC industry have resorted to aggressive campaigns to reduce competitors' market share, including, in some cases, calling drivers registered to one TNC and arranging fake pick-ups to prevent drivers from responding to real customers. Publication of the requested trip data could help competitors determine whether Pittsburgh should be amongst the markets in which such unsavory tactics, or more robust traditional marketing, should be deployed.

Finally, although the production of aggregate trip data may seem innocuous, the aggregate trip data for the Pittsburgh market would be specific enough to formulate market models and projections. Pittsburgh is a relatively small market. Considering the tremendous technological resources available to Lyft's competitors (which far exceed the financial and analytical resources generally available to a typical traditional motor carrier) it would not be difficult to supplement the total number of rides under the Lyft platform with data regarding the dates and times of sporting events, publicly available population and demographic data, traffic

statistics, weather patterns, and other data. Without the trip data, such attempts to model Lyft's market penetration would amount to nothing more than speculation, but published trip data would allow competitors to produce reasonably accurate estimates of the volume of Lyft's business across the Pittsburgh service territory and potentially even in more specific formats, such as neighborhood-specific market forecasts.

For each of the above reasons, I hereby certify that the Company considers the trip data requested by the *July 31 Interim Order* to be proprietary and trade secret. As set forth in the Petition for Interlocutory Review and Answer to a Material Question, Lyft does not publish such data and would suffer significant harm if such data was furnished to the public.



Joseph Okpaku, Director of Public Policy, Lyft, Inc.

SWORN TO and subscribed
before me this _____ day
of _____, 2014.

Notary Public

State of California, County of San Francisco
Subscribed and sworn to (or affirmed) before me
on this 23 day of September, 2014.
by Joseph Okpaku
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature: St. Constantine

