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September 29, 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., For Emergency Temporary Authority to Offer  
Experimental Transportation Network Service Between Points in Allegheny  
County, PA; A-2014-2432304**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission are the Lyft, Inc. Petitions for Amendment of the July 24 Emergency Temporary Authority Order and Extension of Emergency Temporary Authority in the above-captioned proceeding. Please note that Lyft is requesting expedited review of the Petitions.

Parties to the above-captioned proceeding were served with copies of the Petitions on Friday, September 26; however, the prior versions were not filed with the Commission.

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: 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).

**VIA E-MAIL AND FIRST-CLASS MAIL**

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Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 29<sup>th</sup> day of September, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., For Emergency :  
Temporary Authority to Offer Experimental : Docket No. A-2014-2432304  
Transportation Network Service :  
Between Points in Allegheny County, PA :

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**PETITION FOR AMENDMENT OF THE JULY 24  
EMERGENCY TEMPORARY AUTHORITY ORDER  
AND  
PETITION FOR EXTENSION OF  
EMERGENCY TEMPORARY AUTHORITY**

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Pursuant to Sections 703(g) of the Public Utility Code and Sections 5.41, 5.43, and 5.572(d) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, Lyft, Inc. ("Lyft" or "Company"), submits this Petition for Amendment of the July 24 Emergency Temporary Authority Order ("Petition for Amendment") and Extension of Emergency Temporary Authority ("Petition for Extension of ETA") (collectively "Petitions"). Approval of the Petitions is necessary to permit Lyft to continue meeting the public need for experimental transportation network service between points in Allegheny County, Pennsylvania. In support thereof, Lyft avers as follows:

**I. Introduction**

1. On April 3, 2014, Lyft filed an Application at Docket No. A-2014-2415045 ("Experimental Application") requesting the issuance of a Certificate of Public Convenience to offer experimental transportation network service between points in Allegheny County, Pennsylvania.<sup>1</sup>

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<sup>1</sup> Lyft also filed an Application at Docket No. A-2014-2415047 ("Statewide Experimental Application") requesting issuance of a certificate of public convenience to offer transportation network service throughout the Commonwealth, which is pending before the Commission.

2. On July 16, 2014, Lyft filed an Application for Emergency Temporary Authority to Offer Experimental Transportation Network Service Between Points in Allegheny County, Pennsylvania ("ETA Application").

3. On July 24, 2014, the Commission entered an Order approving the ETA Application ("ETA Order") pending submission of, *inter alia*, a Form E and tariff to the Commission.

4. On August 14, 2014, the Commission issued a Certificate of Public Convenience authorizing Lyft to offer experimental transportation network service for the 60-day period beginning August 14, 2014 and ending on October 13, 2014.

5. During this period, Lyft's platform has allowed drivers to provide safe and efficient service to the public, without a single customer complaint to the Commission.<sup>2</sup>

6. In anticipation of the expiration of Lyft's ETA authority on October 13, 2014, Lyft respectfully requests that the Commission extend the ETA authority pending final disposition of the Experimental Application. Additionally, Lyft requests that the Commission amend certain provisions of the ETA Order as may be necessary to approve the extension request.

## **II. Legal Standards Applicable to the Petitions**

7. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order.<sup>3</sup> Similarly, Section 5.572(d) of the Commission's Regulations sets for the procedures for petitioning for amendment of a Commission Order.

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<sup>2</sup> As directed by the ETA Order, Lyft has included PUC contact information (*e.g.*, PUC telephone number and website) in the event of a customer complaint. To the Company's knowledge, no complaints have been registered as of September 26, 2014.

<sup>3</sup> See 66 Pa. C.S. § 703(g).

8. The Commission enumerated its standard for amending orders in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that a "petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part," and that the Commission "expect[s] to see raised in such petitions... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Id.*; *Application of Consolidated Rail Corporation, et al.*, 2012 WL 3042071 (Penn.P.U.C., 2012) (clarifying that *Duick* standard applies to Petitions for Reconsideration and Petitions for Amendment of Commission Orders).

9. Lyft submits that the arguments supporting its Petition for Amendment are either new and novel, were overlooked, or not addressed by the Commission in rendering the ETA Order. Therefore, the standards of *Duick* have been satisfied, and Lyft respectfully requests that the Commission exercise its discretion to grant this Petition for Amendment or, alternatively, waive the relevant provisions of the ETA Order.

10. With regard to extension of the ETA, the Public Utility Code authorizes the Commission to approve applications for temporary certificates of public convenience in emergencies, without hearing, while evaluating action on permanent certificates. 66 Pa.C.S. § 1103(d). The Commission's Regulations further provide that the initial 60-day ETA period may be extended pending disposition of an Application for Temporary Authority (Non-emergency), provided that the Application for Temporary Authority is accompanied by an Application for Permanent Authority. *See* 52 Pa. Code § 3.383(c)(4)(iv).

11. In this case, filing of an Application for Temporary Authority would constitute an unnecessary waste of resources as the ALJs assigned to the Experimental Application have already closed the record in that proceeding and are preparing a Recommended Decision for the Commission's consideration. *See Interim Order Closing the Record*, Docket No. A-2014-2415045 (September 17, 2014). Accordingly, filing a separate Application for Temporary Authority would only place additional burdens on the Commission's staff as the Experimental Application will be before the Commission (subject to any Exceptions) before the end of the initial 60-day ETA period. As such, with consideration of the requested amendments/waivers related to the ETA Order, extension of the ETA is appropriate and in the public interest.

### **III. Discussion**

#### **a. Petition for Amendment**

##### ***i. Vehicle Age and Mileage Restrictions***

12. The Commission's directive to remove vehicles older than 8 years and with more than 100,000 miles on the odometer has proven extremely burdensome. In attempting to identify and notify drivers registered to provide transportation service under the Lyft platform with vehicles older than 8 years, Lyft determined that enforcement of this provision would remove a significant portion of drivers from its platform. Given the rigorous inspection standards now in place for all Lyft drivers' vehicles, the 8-year age restriction is overbroad and unnecessary. Further, although Lyft agrees with the Commission that vehicle safety used in conjunction with TNC service is critical, the vehicle age and odometer restrictions deny the ability to earn supplemental income to citizens with older, but well-maintained, vehicles that pose no safety hazards to the public. As Lyft already confirms that each vehicle has passed a Pennsylvania Department of Transportation annual inspection and maintains a highly-utilized customer

feedback system, the additional vehicle age and odometer restrictions are unnecessarily discriminatory.

13. For the above reasons, Lyft respectfully requests that the Commission amend the ETA Order to eliminate the vehicle age and odometer restrictions or, alternatively, grant a waiver of this requirement. As an additional alternative, Lyft requests that the Commission extend the vehicle age requirement to 10 years, thereby removing the oldest cars from service, but mitigating the discriminatory effect on many potential drivers and customers.

*ii. Notice to Drivers' Personal Insurers*

14. Lyft has numerous concerns regarding unintended consequences of the insurer notice provision. The ETA Order stated that:

we will require Lyft to direct all operators/drivers to notify their insurer, in writing, of their intent to operate in Lyft's service. Lyft is required to maintain a copy of this notification for each operator/driver during that driver's affiliation with Lyft and for a period of three (3) years following termination of an operator's/driver's service.

ETA Order, p. 18. As suggested by many insurance industry representatives, an insurance company may, whether justified or not, decide to cancel a customer's personal auto liability policy solely because the individual registers as a driver under the Lyft platform, regardless of whether an individual ever gives a ride, the frequency of usage, or whether a claim relates to Lyft driving activity. Such a notice requirement has no benefit for public safety or driver protection; instead, the only potential beneficiaries of such a requirement are insurance companies.

15. Second, any duty of an insured to notify an insurer of any change related to the insured risk is strictly a contractual matter between the insured and the insurer, and is beyond the scope of Lyft's duties as a third party to the contractual relationship. Pennsylvania courts have held that the relationship between an insurer and the insured is primarily contractual, and that the

insurer is not required to explain every possible permutation or consequence of the selected insurance policy. *Treski v. Kemper Nat. Ins. Companies*, 449 Pa.Super. 620, 637, 674 A.2d 1106, 1114 (Pa.Super. 1996). Accordingly, with regard to the duties of the insured, the Supreme Court of Pennsylvania has imposed a duty to inform the insurer of changes to the insured risk when such duty is affirmatively established by the insurance contract. *See McKee v. Susquehanna Mut. Fire Ins. Co.*, 135 Pa. 544, 556-57, 19 A. 1067, 1067 (Pa. 1890); *see also Rife v. Lebanon Mut. Ins. Co.*, 115 Pa. 530, 533, 6 A. 65, 67 (Pa. 1886); *see also St. Louis Fire & Marine Ins. Co. v. Witney*, 96 F.Supp. 555, 562 (D.C.Pa. 1951).

16. In *Rife*, the court found that an insured homeowner had a contractual duty to notify the insurer of known increases to the insurer's risk, but found no breach where the homeowner failed to notify the insurer of a new railroad constructed alongside the insured residence. *Id.* The court based its finding on the fact that the insured homeowner possessed no knowledge that a nearby railroad could increase risk of damage to the home. *Id.* Accordingly, under Pennsylvania law, an insured's duty to notify the insurer of changes to the insured risk is limited in scope, existing only when affirmatively required by contract and the increased risk is known to the insured. Otherwise, no such duty exists.

17. Based on Pennsylvania law, Lyft should not be interjected into the relationship between the personal insurer and the insured. If the driver is not expressly required to provide notice of TNC activities under the existing personal auto liability contract, the Commission should not force Lyft to impose extraneous obligations on the drivers. With respect to the Commission's concern for the insurance companies, these companies have the resources to survey their customers and/or modify their contracts as necessary to address any purported increase to their auto liability risks resulting from TNC service. Lyft respectfully submits that

there is no legal or public policy justification for the Company to perform the duties incumbent upon the drivers' personal auto liability insurers, particularly in light of the Form E submitted to the Commission evidencing that Lyft has purchased sufficient auto liability insurance coverage to cover damage or losses arising from transportation provided through the Lyft platform. *See* Form E at Docket No. A-2014-2432304.

18. Directing drivers to notify their personal insurance companies of an intention to drive under the Lyft platform does not protect the public from harm, but instead interposes Lyft into a contractual relationship between the driver and the driver's personal insurer. Further, as Pennsylvania law places the burden on the insurance company to demonstrate a policyholder's violation of notice provisions in the policy, requiring Lyft to perform the diligence of the personal insurance company seems to exceed the company's duty to ensure that the independent contractor drivers are operating safely. *Strickler v. Huffine*, 421 Pa.Super. 463, 470, 618 A.2d 430, 434 (Pa.Super.,1992) (stating that "under a liability insurance policy on the ground of late notice, the insurance company will be required to prove [(1)] that the notice provision was in fact breached and [(2)] that the breach resulted in prejudice to its position").

19. For the above reasons, Lyft respectfully requests that the Commission amend the July 24, 2014 Order to eliminate the requirement for Lyft to direct drivers to notify their personal insurers of the drivers intent to offer transportation service through the Lyft platform. Alternatively, Lyft requests that the Commission exercise its authority to grant a waiver of this requirement, pursuant to Section 5.43 of its Regulations, as necessary to extend the ETA authority beyond the initial 60-day period. *See* 52 Pa. Code § 5.43.

*iii. Other Conditions*

20. In support of its request to Amend the ETA Order or for waiver of certain conditions in the ETA Order, Lyft submits that the Company has met with the Commission's Law Bureau to confirm compliance with the remaining conditions and remains in compliance with all additional conditions of the ETA Order except as explicitly set forth above. Further, even following the Company's addition of the PUC website and customer complaint hotline to each customer receipt, to the Company's knowledge, no passengers or drivers using the Lyft platform have contacted the Commission to file a complaint.

**b. Extension of ETA**

21. As referenced above, the Commission's Regulations generally require submission of Applications for Temporary Authority (Non-emergency) and Permanent Authority to accompany a request to extend ETA. *See* 52 Pa. Code § 5.383(c)(4)(iv). Due to the timing of the pending Order on the Experimental Application, any requirement to accompany a request for extension of ETA with an Application for Temporary Authority should be waived such that the Commission can take the necessary action to meet the transportation needs of the citizens of Allegheny County pending final disposition of the Experimental Application.

22. Extending the ETA would serve the public interest by allowing the citizens of Allegheny County to continue enjoying the benefits of experimental transportation network service pending disposition of the Experimental Application at Docket No. A-2014-2415045.<sup>4</sup> The circumstances existing as of July 24, 2014 remain equally applicable today, as evidenced by the 29 Verified Statements submitted with the ETA Application, which included statements such as the following:

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<sup>4</sup> Pursuant to the Commission Orders entered on August 14, 2014, at Docket Nos. P-2014-243383 and P-2014-2433428, a Recommended Decision on the Experimental Application is anticipated on or before October 9, 2014.

Lyft has been so helpful and provided me with a ride every single time I needed one. I recently attempted to use Classy Cab to get a ride to the airport. It not like [*sic*] took over an hour to get to me but it took another 30 minutes because they could not find my place. I have NEVER had this issue with Lyft because they know exactly where you live without any complications.

... Public transportation does not accommodate the large number of bags or bulky items. The transit stops are not close to my location or destination. Traveling these distances on foot is not possible with the normal about [*sic*] of groceries a person needs. The Yellow Cab Company has never been reliable often arriving after several hours of initial request.

*See* ETA Application, Exhibit A, Statements of Rachel Edman and Steven Ross Fowler. Comments from the Commission's recent En Banc Transportation Hearing show that the need evidenced in the ETA Application remains immediate. *See Testimony of Representative Erin C. Molchany, Pennsylvania Public Utility Commission En Banc Transportation Hearing*, Docket No. M-2014-2431451 (August 28, 2014) (observing that "[w]ith 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.").

23. As Lyft has substantially complied with the ETA Order, provided service without Complaint from the public, and requested Amendment of the ETA Order and or waiver of the specific conditions raising enforcement concerns, extension of the ETA is appropriate and in the public interest. To that end Lyft requests that the Commission approve the Petitions prior to expiration of the initial ETA period.<sup>5</sup>

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<sup>5</sup> As the Commission may not be positioned to address the Petitions at the Public Meeting scheduled for October 2, 2014, Lyft respectfully requests that the Commission expeditiously approve the Petitions by Secretarial Letter pending final action at the Public Meeting scheduled for October 23, 2014.

**IV. Conclusion**

24. WHEREFORE, for the reasons discussed above, Lyft respectfully requests that the Commission amend or waive the conditions of the July 24, 2014 Order entered in the above-captioned proceeding as set forth above and extend the grant of emergency temporary authority pending disposition of the application for a certificate of public convenience for approval to offer experimental transportation network service between points in Allegheny County, Pennsylvania

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Dated: September 29, 2014