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October 10, 2014

**VIA OVERNIGHT DELIVERY & EMAIL**

Secretary's Bureau  
Attn: Secretary Rosemary Chiavetta  
Pennsylvania Public Utilities Commission  
Commonwealth Keystone Building  
2nd Floor, Room-N201  
400 North Street  
Harrisburg, Pennsylvania 17120

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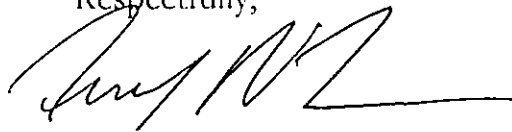
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**RE: *Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette  
v. Lyft***  
**PUC Dkt. No. P-2014-2442001**  
**PUC Ref. Dkt. No. A-2014-2415045**

Dear Secretary Chiavetta:

Enclosed please find the Motion to Strike the Reply to New Matter of Lyft, Inc. filed on behalf of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette.

Respectfully,



Frederick N. Frank

FNF/cwk

cc: 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)

Secretary Rosemary Chiavetta

October 10, 2014

Page 2 of 2

Adeolu A. Bakare, Esquire, *counsel for Lyft, Inc.* (via e-mail)

Bohdan R. Pankiw, Esquire, *Chief Counsel for the PUC* (via email)

Michael S. Henry, Esquire, *counsel for Executive Transportation, Inc.* (via email)

David William Donley, Esquire, *counsel for JB Taxi LLC t/a Country Taxi Cab*  
(via email)

Samuel Marshall, *CEO & President of Insurance Fed. Of Pennsylvania* (via email)

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**OCT 10 2014**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM LYONS and	:	
PG PUBLISHING, INC. d/b/a	:	
THE PITTSBURGH POST-GAZETTE,	:	
Petitioners	:	PUC Dkt. No. P-2014-2442001
	:	PUC Ref. Dkt. No. A-2014-2415045
v.	:	
	:	
LYFT, INC.	:	
Respondent	:	

**MOTION TO STRIKE  
THE REPLY TO NEW  
MATTER OF LYFT, INC.**

Filed on behalf of:  
Petitioners, Kim Lyons and  
*The Pittsburgh Post-Gazette*

Counsel of Record  
for this Party:

Frederick N. Frank, Esq.  
Pa. I.D. No. 10395

Ellis W. Kunka, Esq.  
Pa. I.D. No. 311929

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PA PUBLIC UTILITY COMMISSION  
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**BEFORE THE  
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KIM LYONS and	:	
PG PUBLISHING, INC. d/b/a	:	
THE PITTSBURGH POST-GAZETTE,	:	
Petitioners	:	
	:	PUC Dkt. No. P-2014-2442001
v.	:	PUC Ref. Dkt. No. A-2014-2415045
	:	
LYFT, INC.	:	
Respondent	:	

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**MOTION TO STRIKE THE REPLY TO NEW MATTER OF LYFT, INC.**

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Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette (collectively “The Post-Gazette”) file the within Motion to Strike the Reply to New Matter, of Lyft, Inc.

**I. Statement of Material Facts**

1. There are two separate, but interrelated, Petitions before the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) at issue in this motion. First, On September 10, 2014, The Post-Gazette brought a Petition for an Interim Emergency Order (“The Post-Gazette’s Petition or “The Post-Gazette Action”) at PUC Dkt. No. P-2014-2442001.

2. Second, Lyft, Inc. (“Lyft”) filed a Petition for Interlocutory Review and Answer to a Material Question (“Petition for Interlocutory Review”) at PUC Dkt. No. A-2014-2415045 on September 23, 2014.

3. Both Petitions relate to similar trip data and insurance data from a September 3, 2014 hearing in PUC Dkt. No. A-2014-2415045 (“Lyft Application Docket”). The Post-Gazette seeks to unseal this information; Lyft opposes that effort, asserts the information is proprietary, and should remain under seal.

a. The Post-Gazette’s Petition

4. The Post-Gazette’s Petition filed September 10, 2014 *inter alia* seeks to unseal the record of the September 3, 2014 hearing at Lyft’s Application Docket in its entirety. It also requests that if any party seeks to close the hearings or seal any portion of the record, that the party so seeking must provide reasonable notice of two business days to all parties, including The Post-Gazette, as intervenor, of their intent to seal.

5. By letter dated September 10, 2014, the Secretary of the Commission stated that Lyft’s Answer to The Post-Gazette Petition had to be filed by September 15, 2014 and had to address all relevant factors, as set forth in 52 Pa. Code § 5.365,<sup>1</sup> regarding orders to limit the availability of proprietary information.

6. The Post-Gazette also was permitted to file a response to Lyft’s Answer by September 18, 2014. There was no provision for any further filings in the Commission’s September 10, 2014 Letter.

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<sup>1</sup> The Secretary’s letter cites to 52 Pa. Code § 5.423, which was repealed in 2013. It is believed the Secretary was referring to 52 Pa. Code § 5.365, titled “Orders to limit availability of proprietary information,” which replaced the repealed section.

7. Lyft filed its Answer on September 15, 2014 (“Lyft’s Answer”). The Post-Gazette filed its response to Lyft’s Answer on September 18, 2014 (“The Post-Gazette’s Response”).

**b. Lyft’s Petition for Interlocutory Review**

8. On September 23, 2014,<sup>2</sup> Lyft filed a Petition for Interlocutory Review with the PUC seeking review of the Administrative Law Judges’ September 2, 2014 Interim Order on Motion for Protective Order (“September 2<sup>nd</sup> Interim Order”) at Lyft’s Application Docket.

9. On September 26, 2014, The Post-Gazette by letter to the Secretary (“The Post-Gazette’s Letter”) requested that the Commission not consider Lyft’s Petition for Interlocutory Review captioned at Lyft’s Application Docket with The Post-Gazette’s Petition. In the alternative, The Post-Gazette sought permission to respond to Lyft’s Petition for Interlocutory Review.

10. By secretarial letter dated September 29, 2014, the Secretary granted The Post-Gazette the right to respond to Lyft’s Petition for Interlocutory Review.<sup>3</sup> The Post-Gazette filed a response to Lyft’s Petition for Interlocutory Review on October 2, 2014.<sup>4</sup> Again, there was no provision for any further filings.

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<sup>2</sup> The Petition for Interlocutory Review was published on the electronic docket on September 24, 2014.

<sup>3</sup> It is The Post-Gazette’s position that by the Secretary granting The Post-Gazette the right to file a response to Lyft’s Petition for Interlocutory Review that the PUC has granted The Post-Gazette party status in the action at PUC Dkt. No. P-2014-2442001.

<sup>4</sup> The online docket refers to The Post-Gazette’s Interlocutory Review Response as an Answer.

c. The Reply to New Matter

11. After all permitted pleadings had been made, Lyft on October 7, 2014 filed a “Reply to New Matter” allegedly being in reply to The Post-Gazette’s Response to Lyft’s Answer in The Post-Gazette Action.

12. The Post-Gazette’s Response to Lyft’s Answer did not raise any new matter.

13. Lyft did not seek permission and was not otherwise granted permission to reply to The Post-Gazette’s Response.

II. Lyft’s Motion Should Be Stricken

14. Under the PUC regulations: “The Commission may reject a filing if it does not comply with any applicable statute, regulation or order of the Commission.” 52 Pa. Code § 1.38.

15. Here, there was effectively an Order of the Commission from the Commission’s secretarial letter dated September 10, 2014, which detailed the permitted filings. Lyft’s “Reply to New Matter” was not authorized by the secretarial letter dated September 10, 2014. Therefore, the Commission should strike Lyft’s Reply to New Matter. *Id.*

16. Additionally, The Post-Gazette’s Response contained no new matter. Instead, it responded only to the allegations and legal arguments in Lyft’s Answer.

17. Lyft’s conduct in this matter has been nothing short of outrageous.

18. As noted, *supra*, Lyft filed its Petition for Interlocutory Review, directly addressing the issue of sealing but did not serve it on The Post-Gazette. It essentially was an attempted *ex parte* communication with the Commission.

19. Now Lyft attempts a back-door effort to reply to The Post-Gazette's Response by falsely claiming The Post-Gazette's Response "should be treated as New Matter." The Post-Gazette's Response did nothing more than reply to Lyft's Answer to The Post-Gazette's Petition.

20. Lyft's "Reply to New Matter" is a blatant attempt to circumvent the Commission's limitations on filings. It is a sixteen page brief on the central issue of the press' right to access in judicial proceedings, the exact issue Lyft was to address in its Answer to The Post-Gazette's Petition by September 15, 2014. It is Lyft's second attempt to circumvent the limitations imposed by the Commission on an answer to The Post-Gazette's Petition.

### **III. The Continued Harm to The Post-Gazette**

21. The Post-Gazette initially started their efforts to obtain the records and information at issue in the Commonwealth Court by filing a Petition for Review seeking emergency relief alleging that the PUC's regulations and administrative process would be inadequate to provide the requested relief. *See* Commonwealth Court Docket at 468 MD 2014.

22. The Post-Gazette's request for emergency relief was denied because Counsel for the PUC averred with confidence to the Commonwealth Court that an



expeditious administrative remedy was available that had not been exhausted and that the PUC regulations would provide immediate review of The Post-Gazette's Petition.

23. A ruling on The Post-Gazette's Petition was due on September 25, 2014, which is 15 days after the petition was filed. *See* 52 Pa. Code §3.7 (a) ("A presiding officer will issue an order granting or denying interim emergency relief within 15 days of the filing of the petition.").

24. A primary cause of the delay is Lyft's course of conduct described above, in particular paragraphs 17-20.

25. The "Reply to New Matter" of Lyft, which is filed twelve days after a ruling should have been entered, only perpetuates this delay and should be stricken.

26. As set forth in The Post-Gazette's pleadings, The Post-Gazette and the public are harmed when their right to information about matters of important public concern is vindicated long after the fact. Over a month has gone by since the sealing on September 3, 2014. The Post-Gazette and the public should no longer be denied access.

WHEREFORE, The Post-Gazette requests the Commission strike Lyft's  
"Reply to New Matter."

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO  
& POCRASS, P.C.



DATED: October 10, 2014

By: \_\_\_\_\_  
Frederick N. Frank, Esq.  
Ellis W. Kunka, Esq.  
Attorneys for Kim Lyons and  
*The Pittsburgh Post-Gazette*

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing Motion to Strike the Reply to New Matter of Lyft, Inc. upon the person via email set forth below, in accordance with 52 Pa. Code § 1.54.

**Lyft, Inc.**  
James P. Dougherty  
Barbara A. Darkes  
Adeolu A. Bakare  
McNees Wallace & Nurick LLC  
100 Pine St., P.O. Box 116  
Harrisburg, PA 17108

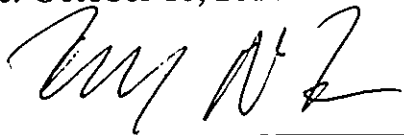
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Philadelphia, PA 19103

**Executive Transportation Inc.**  
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Michael S. Henry, LLC  
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Philadelphia, PA 19145

Date: October 10, 2014



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(Attorneys for Petitioners, Kim Lyons and *The Pittsburgh Post-Gazette*)  
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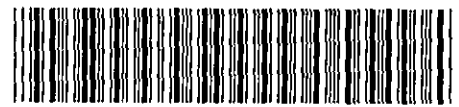
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