

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Petition of Interlocutory Review filed by Lyft, Inc., and Petition for Interim Emergency Order, filed by Kim Lyons and PG Publishing, Inc., d/b/a The Pittsburgh Post-Gazette

**Public Meeting - October 23, 2014
2415045 – LAW
Docket Nos. A-2014-2415045
P-2014-2442001, A-2014-2415047**

Petition of Kim Lyons and PG Publishing, Inc d/b/a The Pittsburgh Post-Gazette for an Interim Emergency Order

Application of Lyft, Inc. a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania

DISSENTING STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (Commission) are two Petitions: (1) a Petition for Interim Emergency Order (PPG petition) filed by Kim Lyons and PG Publishing, Inc., d/b/a The Pittsburgh Post-Gazette (collectively, PPG) seeking to have access to 6 pages of a currently sealed transcript containing aggregate trip data provided by Lyft in Allegheny County; and (2) a Petition for Interlocutory Review and Answer to a Material Question (Lyft Petition), seeking proprietary treatment of the aggregate trip data in question. While the majority denies PPG's Petition as filed, it also answers Lyft's question in the negative, thus unsealing the record and making Lyft's aggregate trip data publicly available. While I agree that PPG's Petition should be denied, I disagree with the majority's conclusion that aggregate trip data provided by Lyft in Allegheny County should be publicly disclosed.

Regarding the treatment of proprietary information, our regulations state, in part, that:

A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.365.

Here, the sole factual information at issue involves the aggregate number of rides Lyft provided in Allegheny County during designated time periods. While I agree that the information at issue does

not include such nuances as the start time, duration, destination, mileage, charges and other details of these rides, I believe that publicly disclosing the aggregate number of rides given by Lyft in Allegheny County at certain time intervals is confidential and will allow Lyft's competitors to gain information that can (and most likely will) be used to substantially harm Lyft and its operations in the future.¹

Specifically, I am persuaded by Lyft's arguments in its Main Brief that public disclosure of aggregate trip data of its operations in Allegheny County will allow Lyft's competitors to, among other things:

- Assess and calculate market share in Allegheny County;
- Model and forecast Lyft's activities in other markets;
- Reassess resource development in Allegheny County; and
- Serve as a building block to replicate Lyft's sales patterns in other markets.

All of these factors both individually and collectively illustrate why Lyft has met its burden to show why the trip data at question is proprietary in nature and should be afforded confidential treatment under a protective order, as we do for other proprietary information, even when amassed in the aggregate, that would be of value to a Company's competitors and whose disclosure would substantially harm a Company.²

At this juncture, I believe that the Commission should err on the side of caution and properly protect this information that Lyft seeks to be treated as confidential under our regulations. The transportation network company (TNC) market is a burgeoning market in Pennsylvania as well as in other jurisdictions and I am not convinced that the information concerning the aggregate number of rides given by Lyft in Allegheny County will not result in substantial harm to Lyft's operations and financial performance in the future. If the Commission chose to grant Lyft's protective order, other parties would still have access to the information in accordance with a properly executed confidentiality disclosure agreement. In doing so, both interests articulated in this case would be balanced.

For these reasons, I dissent.

DATE: October 23, 2014


PAMELA A. WITMER
COMMISSIONER

¹ While the majority notes that the information at question "does not 'involve the number of rides in a particular market...,'" it also concedes that "[i]t is simply a compilation of the number of trips provided in Allegheny County...." These two statements are not compatible. The disclosure of information in a limited geographic area such as Allegheny County is not similar to the type of aggregate data that the Commission has allowed for public disclosure in the past. Accordingly, I'd strenuously argue that the majority's reliance on *Exelon Energy* for support of its position is misplaced.

² See, e.g., *The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink Petition for Protective Order Regarding 2011 Annual Price Cap Filing*, Docket Nos. P-2011-2269403, R-2011-2258325 (Order entered Dec. 1, 2011). See also *Retail Electricity Choice Activity Reports*, Docket No. L-00070184 (confirming that information filed related to individual EGS market share be kept confidential).