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October 24, 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 are the Exceptions of Lyft, Inc. in the above-referenced 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

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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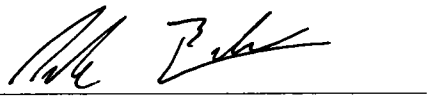

Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 24th day of October, 2014, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 Allegheny County	:	A-2014-2415045

EXCEPTIONS OF LYFT, INC.

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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"), 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.

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,

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[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.

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.[2] Lyft further received Prehearing Conference Memoranda from 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.

At the ALJs' request, the 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.

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

Prior to the September 3, 2014 hearing, on August 29, 2014, Lyft filed a Petition for Protective Order seeking to protect the Applicant's insurance policies and the ride data requested by the July 31, 2014 Order. On September 2, 2014, ALJs Long and Watson issued an Interim Order on the Motion for Protective Order ("1st Protective Order") partially granting and partially denying the Motion for Protective Order. The parties subsequently convened for the second hearing on September 3, 2014.[3] Due to extended cross-examination of Lyft witness Joseph Okpaku at the September 3, 2014 hearing, an additional hearing was 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 the Temporary Protective Order ("2nd Protective Order"), modifying in part the 1st Protective Order and granting temporary protection for the trip data submitted in response to the July 31 Interim Order.

On September 15, 2014, Lyft filed a Main Brief. Briefs were submitted by the Insurance Federation, JB Taxi, and the Eastern Pennsylvania Taxicabs.

On October 9, 2014, ALJs Long and Watson issued a Recommended Decision (R.D.) supporting denial of the Application.

[3] 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.

B. Overview

Lyft commenced these proceedings in connection with its efforts to offer a peer-to-peer platform to facilitate transactions between passengers and drivers using their own vehicles to provide transportation in Allegheny County. Lyft seeks 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, in reviewing the proposed Application, the ALJs failed to appropriately evaluate Lyft as an experimental TNC. In describing Lyft's filing, the ALJs initially acknowledged the innovation of Lyft's proposal to facilitate transportation by providing a platform through which drivers using their own personal vehicles can offer rides to passengers seeking transportation. However, in evaluating the regulatory standards for approving a Certificate of Public Convenience to offer experimental service, the ALJs rigidly applied regulatory constructs developed through years of application to traditional motor carrier services, without appropriately weighing the practical and operational distinctions between traditional motor carrier services and TNCs.

As recognized in the R.D., TNC platforms can provide enormous benefits for Pennsylvania communities. Importantly, TNC platforms cannot deliver the desired transportation efficiencies if the applicable regulatory structure ignores the distinct and specific characteristics of the TNC business model. Of course, the basic objective of the Commission's regulatory authority must remain unchanged with regard to any application seeking authority to offer or facilitate transportation subject to the Commission's jurisdiction. Accordingly, Lyft is not proposing that the Commission lower its safety standards; rather, Lyft is encouraging the Commission to reevaluate the applicability regulatory schemes designed for traditional motor

carriers like taxicabs, to ensure that the rules and regulations applied to TNCs are appropriate and in the public interest. To that end, Lyft seeks to further these objectives of protecting public safety and providing needed transportation service. But, Lyft designed its Application to reflect key operational differences between TNC platforms and traditional motor carriers. The R.D., while laudable in its attempt to address such new issues, fails to conduct a sufficiently nuanced review of the service proposed by Lyft, and therefore it must be reversed by the Commission.

C. Summary of Exceptions

The R.D. recommended that the Commission deny the proposed Application based on an alleged failure to meet the requirements for granting of a Certificate of Public Convenience. Approval of the R.D. would contravene the public interest and deprive the citizens of Allegheny County of the necessary efficiency and convenience afforded by widespread availability of Lyft's TNC platform. Because the R.D.'s findings were not based on substantial evidence, the R.D. should be reversed.

The need for Lyft's transportation networking platform in Allegheny County is not in doubt. As demonstrated by the record and acknowledged by the ALJs, Lyft's TNC platform offers a flexible, efficient, and rapidly scalable transportation resource that has already benefitted residents across Allegheny County.

Despite the vital need, the ALJs recommend rejecting the Application based on a purported lack of fitness of the applicant. As demonstrated in the below Exceptions, the R.D. overlooks an abundance of evidence showing that Lyft has offered insurance coverage consistent with the Commission's Regulations, developed a thorough and effective plan to monitor vehicle and driver safety, demonstrated that the company has sufficient financial resources to support the proposed Pennsylvania operations, and participated in the regulatory review process in a manner sufficient to show a propensity to operate legally.

Lyft offers a new and revolutionary transportation networking platform that can change the manner in which people interact and move within communities. Unverified and questionable claims that taxicab companies can duplicate app-based transportation severely misrepresent the impact of the composite elements of Lyft's TNC platform. By way of illustration, some of the important and unique benefits of Lyft's platform include:

- Rapid response to increased demand due to leveraging of existing transportation resources in communities and elimination of necessity to maintain standing inventory during low-demand periods.
- 24-hour delayed payment feature, which allows customers to use the service without furnishing a point-of-sale payment to the driver and eliminating potential conflicts between drivers and passengers.
- GPS-tracking on all rides through the platform.
- Real-time rating system designed to incentivize safe practices and courteous interaction for all users of the platform, including both drivers and passengers.

As demonstrated by the Comments submitted by Pennsylvania citizens, these attributes add tremendous value. To ensure that the citizens of Allegheny County continue to enjoy the benefits of Lyft's TNC platform, the Commission should reverse the R.D.'s findings as to fitness and approve the proposed Application.

II. EXCEPTIONS

A. Exception No. 1. ALJs erred in ruling that the proposed coverage for Period 1 is inconsistent with the Commission's Regulations. (R.D., p. 23, F.F. 20-27).

Based on a fundamental misunderstanding of the activities occurring during what is referred to in the TNC economy as "Period 1," the ALJs inappropriately found that the insurance coverage offered by Lyft during Period 1 fails to comply with Section 32.11 of the Commission's Regulations. R.D, p. 23. Most importantly, the R.D. concludes that contingent coverage is inconsistent with Section 32.11 of the Commission's regulations. *Id.* The R.D. further appears to suggest that even if contingent coverage could be approved under Section 32.11 of the

Commission's Regulations, Lyft has failed to set forth facts establishing that primary coverage is unnecessary. *Id.* Finally, the R.D. states that, regardless of the adequacy of contingent liability, Lyft's Contingent Liability Policy fails to meet the specific coverage requirements of Section 32.11 of the Commission's Regulations. R.D., p. 8. As indicated above, the ALJs' analysis of Period 1 suffers from a mistaken impression that regulated common carrier activity occurs during Period 1.

The Commission recently addressed the activity occurring during Period 1 in the ETA Order. Therein, the Commission defined the Periods (or Stages) as follows:

- Stage 1 – Driver opens the App and is soliciting rides.
- Stage 2 – Driver receives and accepts a ride request and travels to pick up the passenger.
- Stage 3 – Driver picks up the passenger, drives the passenger to the destination, and the passenger exits the car.

ETA Order, p. 17. Based on these definitions, the Commission next determined that Lyft must offer primary liability coverage during Periods 1-3. *See id.* However, and most importantly, when setting forth the ruling, the Commission clarified that "because the driver is 'on the clock' and working for Lyft during Stages 1 and 3, it is Lyft's insurance (and not the driver's insurance) that must be primary during all three of these stages." *Id.*

As discussed during compliance meetings between Lyft and Commission staff in the days following issuance of the ETA Order, the Commission's *own language* established the critical distinction between Period 1 and Periods 2-3. Drivers offering transportation service through Lyft's platform <u>cannot solicit rides</u> and <u>are not "on the clock" or "working"</u> during Period 1. Accordingly, recognizing the ambiguity in the ETA Order, Commission staff agreed that primary insurance during Period 1 is not required because the driver is not "working" during such time.

At the evidentiary hearings held on September 3, 2014, Lyft's witness thoroughly described the activity occurring during each Period:

> The first period, which we refer to as period one, is the period of time in which a driver on the Lyft platform has the app open but has not yet accepted a ride. They could be sitting at home with the app open. I could be a driver and have the app open right now. There's no passenger in the car, there's not even necessarily any driving activity taking place.
>
> The second period, the period that we call period two, is when a passenger has requested a ride and that Lyft driver has accepted the ride. Period two lasts from the moment that the Lyft driver accepts the ride, all the way through the period that the Lyft driver is in route to pick up that passenger, until the passenger gets into the car.
>
> Then period three is the ride itself, the period of time that the passenger gets into the car until the period of time that the ride is over and the passenger gets out of the car.

Tr. 261-62; *see also* Lyft M.B., p. 32. Lyft's witness added a further illustration of the difference between Period 1 and Periods 2-3, stating that "period one is inherently different than periods two and three, there's no ride activity taking place, there's no passenger in the car, there hasn't even been a request for a ride. At that point in time you are simply an individual in your car going about your daily business." Tr. 265.

The ALJs incorrectly determined that "there is activity in Period One that can be considered part of the transportation service." R.D., p. 23. As an example of transportation activity occurring during Period 1, the R.D. cites to the provision of incentives for drivers to "make themselves available for transportation services during times of peak demand." *Id.* This is a reference to Lyft's use of dynamic pricing through its "Prime Time Tips" program. The Prime Time Tips program offers higher rates for transportation service through the platform during high demand periods, including holidays or peak travel hours. *See* Tr. 274. The ALJs have apparently misconstrued the program as a tool to incentivize drivers to turn on their app and

head out on the road looking for rides. *See* R.D., p. 23. Lyft's Prime Time Tips program does not create any incentive to get out on the road and "troll" for rides. *Id.* Lyft's witness clarified the incentivized action as follows:

> And specifically, when it comes to incentivizing that more Lyft rides are available, as I mentioned before, I could be a Lyft driver, I could have my app on right now and get a ride request, walk outside to my car and go provide a ride. So the issue is not necessarily being on the road. The issue is being available to accept a ride.

Tr. 428-29. Therefore, the Prime Time Tips program does not encourage drivers to cease any personal activity and get in their vehicle to troll for passengers. *Id.; see also* Lyft M.B., p. 34. Rather, whether currently driving for personal reasons, sitting at home, or out at a coffee shop, drivers are incentivized to turn the app on and accept ride requests. *See id.*

As clarified by Lyft's witness, the ALJs' finding that common carrier service occurs during Period 1 is not supported by record evidence establishing the manner in which transportation service is provided through Lyft's platform. Instead, the ALJ reaches the conclusion that transportation service is provided during Period 1 by evaluating Lyft's proposed service through a taxicab paradigm. The ALJs apparently linked Lyft's Prime Time Tips program to transportation activity by analogizing being available on the Lyft platform to being available in a traditional taxicab. *See* R.D., p. 23. These situations are not analogous. A traditional taxicab driver owns and operates a vehicle dedicated entirely to use in common carrier service. From the time the driver enters the taxicab vehicle, his sole purpose becomes the solicitation of rides. As discussed above, transportation provided through the Lyft platform differs materially from this structure because, until the driver has accepted a ride through the platform, the driver could be doing absolutely anything at any location. *See* Tr. 384, 428-29. Further, even if a driver were otherwise inclined to drive around looking for available

passengers, the platform eliminates any incentive to do so because the driver can only accept ride requests received through the platform. *See* Lyft M.B., p. 34.

The elimination of a driver's incentive to troll for rides is not an incidental by-product of the Lyft's TNC model, but a central and critical component of the intended efficiencies that defines the point at which personal activity ends and transportation activity under the platform begins. One of the primary purposes of Lyft's platform is to improve transportation efficiency by eliminating single occupancy travel, which is exactly what occurs when taxi drivers circle city blocks in hopes of locating a passenger. *See* Lyft M.B., pp. 8-9 *citing* Tr. 235; *see also* Tr. 238. To improve the efficiency of vehicular transportation, Lyft's platform allows non-professional drivers to offer transportation services by making such drivers available without requiring them to abandon their personal activities and solicit rides. *See* Tr. 238 (stating that "if we are seeing more on-demand service, there's less, how would you call it, trolling for fares on the roads, so we do think that it helps reduce vehicle miles traveled"). Therefore, because drivers are not engaged in transportation for compensation until a ride request is accepted (which triggers Period 2), there is no reason to require a certificated TNC to offer any insurance coverage during Period 1. *See* Lyft M.B., p. 35.

Nonetheless, although no transportation activity occurs through the platform during Period 1, Lyft determined that it would be beneficial for drivers and passengers to offer a safety net, just in case auto insurance purchased by the driver lapses, declines coverage, or is otherwise unavailable. As stated by Lyft's witness, the company made a policy decision that "in the off chance that a [personal] insurance policy that a driver held were to decline coverage, that there would still be coverage." *See* Tr. 266. However, as described in Lyft's Main Brief, the provision

of primary coverage during Period 1, particularly at levels exceeding the state minimum, would invite fraud and misuse due to the "moral hazard" described below:

> 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. For this purpose, out of an abundance of caution, Lyft purchased the Contingent Liability Policy as an appropriate solution to offer an added layer of protection to the Primary Auto Liability policy, which covers the actual provision of transportation service through the platform, *i.e.* the periods where a driver is "working" under the platform.

With the clarification that Lyft provided ample record evidence showing that primary insurance is not necessary or appropriate for Period 1, the question now becomes whether the ALJ erred in finding that the Contingent Liability Policy is inconsistent with Section 32.11 of the Commission's Regulations. The R.D. stated, without analysis or support, that "the regulation does not contemplate anything other than primary coverage." R.D., p. 23. This assertion misrepresents the plain meaning of the regulation. Section 32.11 references "liability insurance" with no specification as to whether the insurance must be primary or contingent.[4] *See* Lyft M.B., p. 34. Section 32.11 requires any entity offering common carrier service in Pennsylvania to obtain "a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others *resulting from the operation,*

[4] Even if Section 32.11 of the Commission's Regulations required primary insurance, Section 512 of the Public Utility Code would authorize the Commission to apply contingent insurance as the appropriate coverage for the proposed experimental service Application. *See* 52 Pa. Code § 32.11 *see also* 66 Pa. C.S. § 512.

maintenance or use of a motor vehicle in the insured authorized service." *See* 52 Pa. Code § 32.11. As discussed above, vehicles used by drivers in conjunction with Lyft's platform are not engaged in authorized service during Period 1. Therefore, the provision of primary coverage during Periods 2 and 3 satisfies Lyft's obligations under Section 32.11 of the Commission's Regulations.

Although the primary coverage provided through Lyft's auto liability policy meets Lyft's obligations under Section 32.11 regardless of the Contingent Liability Policy, the ALJs still erred in finding that Lyft's Contingent Liability Policy fails to meet the coverage limits set forth in Section 32.11. *See* R.D., p. 8. The Contingent Liability Policy includes an endorsement effective April 1, 2014, establishing bodily injury limits of $50,000/person and $100,000/accident, and a property damage limit of $25,000/accident. *See* Insurance Federation Exhibit No. 1; *see also* Lyft Exhibit No. 1-B. These limits are in excess of the respective $15,000/$30,000/$5,000 split coverage required under Section 32.11 of the Commission's Regulations. *See* 52 Pa. Code § 32.11.

Finally, no uncertainty exists as to when the Contingent Liability Policy would attach. The R.D. stated that "Applicant's witness conceded that he was not sure what constitutes a personal auto liability policy being 'unavailable,' or a personal auto insurer declining coverage, or whether the Applicant's insurer could challenge a personal insurers' declining of coverage." *See* R.D., p. 23. The R.D. completely ignores that fact that, following live questioning at the September 3, 2014 evidentiary hearing, these issues were subsequently addressed on the record through supplemental discovery responses. *See* Insurance Federation Exhibit No. 4. Through the discovery responses, Lyft's witness clarified that its Contingent Liability Policy <u>does not</u> include any special provisions granting the insurer a right to challenge a personal insurer's

declining of coverage or any exclusions for lapsed or cancelled personal insurance policies. *See id.* Therefore, the record does not reflect any credible basis for uncertainty as to when coverage attaches under the Contingent Liability Policy.

For the reasons discussed above, the ALJs erred in finding that primary coverage is necessary or appropriate for Period 1. Accordingly, the Commission should grant this Exception and approve Lyft's proposed insurance coverage.

B. <u>Exception No. 2</u>. The ALJs erred by imputing unreasonable and unfounded insurance requirements onto Lyft. (R.D., p. 23-25, F.F. 28-33, 37-40).

In addition to evaluating the requirements of Section 32.11 of the Commission's Regulations, the R.D. also imputed several additional duties onto Lyft without establishing a legal basis for such directives. The R.D. avers that Lyft does not adequately confirm that each driver registering for the platform possesses a valid personal auto insurance policy. *See* R.D., p. 23. The R.D. further criticizes Lyft for failing to conduct a detailed review of each driver's personal auto insurance policy and suggests that Lyft is responsible or obligated to interfere in the contractual relationship between a driver and a personal auto insurer. *Id.* at 24. Similarly, the R.D. relies on incomplete references to the record to conclude that Lyft's insurance policies create gaps in coverage. *See id.* Lastly, the R.D. reaches unsupported and irrelevant conclusions regarding the risk assessment practices of Lyft's insurer. *See* R.D., p. 10. These observations are not based on any legal requirements, but on unfounded "recommendations" from the Insurance Federation. *See* R.D., pp. 24-25. Such additional requirements are not necessary to protect the safety of common carrier service subject to the Commission's jurisdiction and should therefore be disregarded.

First, the R.D. charges Lyft with insufficiently verifying the personal auto insurance policy of drivers using its platform. R.D., p. 23. However, the Commission's Regulations

establish no standards for requiring a regulated common carrier to ensure that drivers enlisted in common carrier service maintain a valid personal auto insurance policy. *See* 52 Pa. Code § 29.501 *et seq.* Nonetheless, Lyft's Application included a voluntary commitment towards "[r]equiring that any individual wishing to offer transportation as a driver on the TNC platform provide proof of current personal liability insurance coverage in at least the amounts specified in 75 Pa.C.S. § 1702 and 75 Pa.C.S. § 1711." Lyft Exhibit 1-B, Redline, p. 3. Consistent with the Application, Lyft provided evidence outlining its procedures for verifying each driver's personal auto insurance policy, which includes checking the driver's insurance card during the initial on-boarding process and subsequently monitoring continuous compliance as follows:

> Whenever the policy is – expiration date that's listed on the card is provided, we make sure that the driver update [*sic*] the information and provide proof of the updated insurance card. So we'll send out a reminder I believe a month out from the expiration date, two weeks out, a week out, and if we haven't gotten the updated insurance proof by that point, we'll disable the driver.

Tr. 373-75. The R.D. adopts the Insurance Federation's position that Lyft's proposal to rely on drivers' insurance cards to verify personal auto insurance coverage is insufficient and suggests that more frequent review is needed. *See* R.D., pp. 23-24. While there would always remain some possibility that a driver may miss a payment or an insurance carrier may become insolvent, nothing short of daily calls to the insurance carrier and PennDOT would protect against the potential for such contingencies. *See* Tr. 374. The Insurance Federation's concerns are akin to a "red herring" and should be dismissed as such.

Moreover, the diligent monitoring of drivers' personal auto insurance policies was far more germane to the original purpose of this requirement, which was to preserve the efficacy of Lyft's excess auto insurance policies proposed for Periods 2 and 3. The company originally proposed to offer excess auto liability insurance to cover Periods 2 and 3, but later updated the

Application to include purely primary auto liability policies for Periods 2 and 3. *See* Tr. 262-63. Lyft's witness outlined the revision as follows:

> However, the change that took place that's noted in Exhibits 1-A and 1-B is that instead of having this be an excess policy, as I described, we changed it to be a purely primary policy, meaning that if an incident happened in period two or period three, again, from the period that a ride is requested through the ride itself to the end of the ride, that our insurance now is primary right off the bat, it doesn't look to the driver's personal insurance to determine whether they are going to provide coverage or not.

Id. As Lyft now offers primary auto liability insurance covering the full scope of periods 1 and 2, the driver's personal auto insurance policy becomes irrelevant to any claims process regarding accidents resulting from operation of a vehicle in conjunction with the platform.

While Lyft still believes that confirming each driver's possession of a valid auto insurance policy to be a beneficial measure in terms of verifying driver responsibility and good citizenship, Lyft should not be considered responsible for each driver's obligation to maintain a valid auto insurance policy when using their vehicle for personal use. All drivers using the platform remain subject to Pennsylvania's motor transportation laws when using their vehicles for strictly personal use. As Lyft intends to further check each driver's possession of a valid personal auto liability policy as an elective measure, Lyft submits that its proposal to check each driver's insurance during the initial on-boarding process and during each scheduled renewal of the policy provides sufficient confirmation that each driver possesses a valid personal auto insurance policy. Therefore, Lyft's proposal to review each driver's auto insurance card is an adequate and reasonable measure that should be approved.

Notwithstanding that fact that the Commission's Regulations do not require Lyft to monitor drivers' personal auto insurance policies, the R.D. takes the additional step of insinuating that Lyft should be responsible for directly reviewing the personal auto insurance policies

purchased by each driver. Specifically, the R.D. states that Lyft "does not propose to examine its drivers' personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those policies may be subject to termination or new rates if their insureds become Lyft drivers." R.D, p. 24. Such concerns are beyond the scope of the Commission's mandate to protect the public by requiring common carriers to obtain adequate insurance. *See* 66 Pa. C.S. § 512. The applicable mandate, pursuant to Section 512 of the Public Utility Code authorizes the Commission to:

> The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters.

66 Pa. C.S. § 512. The insurance contract between a driver and a personal auto insurer is outside the scope of the Commission's regulatory authority. *See id.* The ALJ has not explained the legal justification for requiring Lyft to review and interpret a contract that the Commission is powerless to regulate. *See* R.D., p. 24. Moreover, Lyft's interpretation of each driver's personal auto insurance policy would not be binding on the personal auto insurer and may lead to confusion for the affected driver if Lyft interprets any language in the policy in a manner different from the personal auto insurer. For such reasons, Lyft should not be held responsible for enforcing, monitoring, or in any way participating in the contractual relationship between a private personal auto insurer and the insured driver.

Finally, the R.D. concludes that each of Lyft's insurance policies suffers from gaps in coverage. *See* R.D., p. 24 *citing* Tr. 374, 393-97, 401-02. As indicated above, each of the issues raised with respect to attachment of the Contingent Liability Policy was addressed through supplemental discovery. *See id. but cf.* Insurance Federation Exhibit No. 4. The only remaining

alleged "gap" identified in the R.D. was an allegation that Lyft failed to provide coverage in a situation where coverage would be provided for a taxicab operator.[5] Specifically, the R.D. stated that:

> Because the policy coverage is triggered by the action of the driver opening and closing the app, it does not appear that the policy would provide coverage when a driver has discharged a passenger and is returning from that ride. This period would be covered by a typical commercial policy that covers taxicabs.

R.D., p. 8. This allegation reflects yet another unfounded attempt to draw parallels between Lyft's TNC platform and traditional taxicab service To be clear, drivers using the Lyft platform are <u>not</u> analogous to taxicab drivers. For example, a traditional taxicab driver must clock-in and clock-out at a central garage or dispatch facility operated by a centralized taxi operator. *See* R.D. p. 6; *see also* 294-295. Therefore, any time after dropping off a passenger, the taxicab is still in common carrier service because it has not returned to the central dispatch office. The transportation service provided by drivers using Lyft's platform is different. Once a passenger is dropped off, the driver is not under any obligation to return home or to any other central dispatch point. Accordingly, there is no reason for Lyft's insurance policy to cover such circumstances.

Even though Lyft's insurance policies do not cover periods after the passenger exits the vehicle and the app is turned off, this situation does not evidence a gap in coverage. Indeed, the Insurance Federation witness raising the issue never even suggested that a driver's personal insurance would not apply under such circumstances. *See* Tr. 540-41. The witness confirmed only that a traditional commercial auto liability policy would cover an incident occurring after a

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[5] While not strictly a gap in coverage, the ALJs' also questioned whether the amount of first party coverage offered under Lyft's Auto Liability Policy for Periods 2 and 3 met the applicable standards. *See* R.D., p. 7. The R.D. claims that the first party coverage may be inconsistent with the $5,000 medical benefit required by 75 Pa. C.S. § 1711. However, Section 32.11 of the Commission's Regulations increases the required medical benefit to $25,000, which is consistent with Lyft's first party coverage. *See* Lyft M.B., p. 30; *see also* Insurance Federation Exhibit No. 3, Pennsylvania Added and Combination First Party Benefits Endorsement. Similarly, concerns regarding split coverage are addressed by the $1 million of coverage for bodily injury, death, or property damage provided by Lyft's Auto Liability Policy. *See* Lyft M.B., p. 30.

passenger exits the vehicle, but at no point did the witness indicate that, under the same factual scenario involving a driver using the Lyft platform, coverage by the personal insurance carrier would not attach. *See id.*

Finally, the ALJs' findings with regard to the risk assessment process conducted by Lyft's insurer is irrelevant to this proceeding. Again drawing inappropriate comparisons between the Lyft platform and taxicab operations, the ALJs observed that "information about drivers, their accident histories, and the vehicles is an important aspect to properly gauging risk exposure for an insurance company." *See* R.D., p. 10. The Commission is mandated to ensure that common carriers obtain adequate insurance from an insurance carrier authorized to do business in this Commonwealth, and in such amounts as the commission may prescribe...." No party disputes that James River is authorized to do business in the Commonwealth. Therefore, concerns about the valuation methodologies used by James River to evaluate the risk of insuring Lyft's proposed TNC operations are speculative and beyond the scope of the Commission's authority to ensure that Lyft has obtained insurance coverage consistent with Section 32.11 of the Commission's Regulations.

C. <u>Exception No. 3</u>. ALJs erred by failing to appropriately weigh Lyft's explanation of the relationship between the contractual terms and conditions applicable to all jurisdictions and the company's regulatory obligations in Pennsylvania. (R.D. pp. 24-25, F.F. 34-36).

The R.D. places undue weight on the Terms and Conditions agreement applicable to users of Lyft's platform without considering Lyft's explanation that the broad terms set forth therein do not supplant specific regulatory requirements applicable to various jurisdictions in which Lyft operates. Therefore, the R.D.'s claim that Lyft's Terms and Conditions raise questions as to the applicability of Lyft's insurance policies should be rejected.

The R.D. speculates that Lyft's "agreements with its drivers and passengers have a variety of disclaimers and exclusions that may negate the coverage Applicant purports to provide." R.D., p. 24. In the first instance, Lyft's customary disclaimers and exclusions do not mean that Lyft has no liability insurance to cover certain claims. Lyft's witness explained that the Terms and Conditions are intended to generally protect Lyft from direct liability, but clarified that, with respect to Pennsylvania operations, Lyft and all users of Lyft's platform remain "subject to applicable Orders and Regulations of the Pennsylvania Public Utility Commission." *See* Lyft M.B., p. 43. Therefore, language in the Terms and Conditions does not supplant Lyft's obligation to obtain insurance coverage consistent with Section 32.11 of the Commission's Regulations. And to the extent that, as the R.D. further states, Lyft "never explained the impact of such separate agreements with its drivers and passengers on its insurance coverage, but instead, provided a conclusion, without any support, that the agreements and disclaimers of liability would not affect the Applicant's liability," *see* R.D., p. 25. The record shows that Lyft responded to such concerns by noting that language in the referenced Terms and Conditions recognizing that users "may have other rights that vary from state to state." *See* Lyft M.B., p. 43 *citing* JB Taxi Exhibit 1.

To the extent that the Commission remains concerned that language in Lyft's Terms and Conditions could be construed to negate the insurance coverage set forth in the Application, Lyft would not object to approval of the Application on the condition that Lyft modify its terms and conditions to include the following clarification:

> Nothing herein shall be construed to modify Lyft's insurance obligations under the laws and regulations of the Pennsylvania Public Utility Commission.

While Lyft believes the clarifications offered on the record should be sufficient to address the concerns cited in the R.D., the proposed condition provides an alternative means of confirming

that Lyft's insurance obligations under specific Pennsylvania laws and regulations shall be met regardless of any potentially conflicting language in the general Terms and Conditions.

D. <u>Exception No. 4</u>. ALJs erred by finding that Lyft has not demonstrated technical fitness. (R.D., p. 25, F.F. 41-57).

The R.D. found that Lyft's Application set forth insufficient plans to monitor vehicle and driver safety. In making such findings, the R.D. inappropriately compared Lyft's safety plan to the requirements incumbent upon taxicab operators subject to the Philadelphia Parking Authority ("PPA"). *See* R.D., p. 27. The R.D. committed further error by evaluating Lyft's safety plan in comparison to the operations of taxicab companies without taking account of critical differences between taxicab operations and Lyft's TNC platform. *See id.* As discussed in detail in Lyft's Main Brief, the TNC platform proposed by Lyft provides a service distinct from traditional taxicab service and necessitating regulations designed to protect the public safety without diminishing the ability of TNCs to meet transportation needs by effectively incentivizing non-professional drivers to offer their personal vehicles to transport potential passengers.

First, the ALJs erred by reviewing Lyft's safety plan under the erroneous premise that common carriers subject to the Commission's jurisdiction are required to schedule mechanical inspections in addition to the annual PennDot inspection. *See* R.D., p. 27. The ALJs emphasized the fact that "there is no mechanical inspection at the time the vehicle is put into service..." and further observed that "[n]either the Lyft employees nor the Lyft mentors who are responsible for inspecting vehicles are mechanics." *Id.* The Commission's Regulations do not require a common carrier to conduct mechanical inspections in addition to the annual PennDot inspection. *See* 52 Pa. Code §§ 29.405-406. The Regulations require that a common carrier ensure that each vehicle obtain the State annual inspection and submit to additional inspections from the Commission's enforcement staff. *Id.* Although the R.D. cited no authority supporting the claim

that mechanical inspections other than the annual State inspection are required under the Commission's Regulations, it appears that the ALJs relied on testimony from Mr. Joseph Gabbay alleging that taxicab operators in the Philadelphia area are subject to bi-annual mechanical inspections conducted by both the PPA and the Commission. *See* Tr. 166. However, the ALJs failed to note that the PPA's Regulations explicitly require each taxicab operator to submit to a scheduled annual inspection in addition to the annual State inspection. *See* 44 PPA § 15(a). As the PUC's Regulations contain no such requirement, the ALJs' presumption that Lyft was obligated to conduct mechanical inspections was made in error.

Second, the ALJs erred in failing to consider the efficacy of Lyft's safety plan. The R.D. ignored record evidence to conclude that Lyft has not developed a plan to ensure that vehicles operated in conjunction with the platform stay in a safe mechanical condition. *See* R.D., p. 22. The evidence presented by Lyft set forth a multi-part safety plan combining the following measures:

- First, as recognized by the ALJs, Lyft confirms that each vehicle operated in conjunction with the platform maintains its PennDot vehicle registration and inspection. *See* R.D., pp. 10-11.
- Second, as referenced by the ALJs, Lyft conducts no less than four separate driver background checks, including a county records criminal background check (checking electronic records and, where necessary, physical records), a federal criminal background check, a federal sex-offender database check, and a driving record check. *See* R.D., p. 27; *see also* Lyft M.B., p. 21-22 *citing* Tr. 268-270.

- Third, Lyft trains employees and mentors to conduct driving instruction exercises known as "ride alongs" with new drivers as part of the registration process.[6] *See* Tr. 335.
- Fourth, Lyft trains employees and mentors to conduct 19-point inspections of vehicles. *See* R.D, p. 10. The 19-point inspection, while not mechanical, covers basic safety standards including checks of foot brakes, emergency brakes, steering, headlights, tail lights, tire tread, seatbelts, and other critical safety components. *See also* Exhibit 1-B, Redline, pp. 6-7. As discussed above, the 19-point inspection is an appropriate supplement to the annual PennDot inspections performed on each vehicle used in conjunction with Lyft's platform and any additional inspections conducted by the Commission's enforcement staff.
- Fifth, vehicles operated in conjunction with Lyft's platform will be subject to inspection by the Commission's enforcement staff.
- Sixth, Lyft utilizes innovative communications technology to obtain real-time vehicle safety feedback from passengers through its rating system. *See* Lyft M.B., p. 22 *citing* Tr. 271, 359. The ALJs dismissed the effectiveness of Lyft's real-time rating system despite record evidence showing that existing taxicabs have found even less sophisticated customer feedback to be a valuable component of their safety programs. *See* Tr. 60 (taxicab witness confirmed that informal customer complaints are a valuable component of its effort to police drivers). Lyft's platform encourages passengers to leave real-time feedback regarding safety or customer service concerns, and any safety-related comments are

[6] Lyft mentors are experienced Lyft drivers with impeccable driver safety and customer service records. Lyft targets and recruits such drivers to train new drivers. Tr. 293, 357.

automatically tagged for immediate review by Lyft's Trust and Safety team, which remains staffed by live operators 24-7. *See* Lyft M.B., p. 22 *citing* Tr. 359. Importantly, the Trust and Safety team can instantly remove a driver from the platform pending further review of alleged vehicle or driver safety threats. *Id.*

- Seventh, as a corollary to the real-time rating system, Lyft employs a strict zero-tolerance policy regarding use of drugs or alcohol when offering rides through the platform. *See* Exhibit 1-B, Redline, p. 5. The zero-tolerance policy serves as both a remedy, by immediately removing drivers suspected of inappropriate activity, and as a proactive and effective deterrent to prevent future infractions from drivers. *See* Tr. 270-71. (Lyft's witness confirmed that "if there is an issue related to drug or alcohol or other safety issue, all it takes for us to make sure that that driver cannot pick up anybody is literally pushing a button on a computer back at headquarters, and they are taken off the platform.")
- Eighth, Lyft furnishes each driver with a digital copy of its insurance card and provides detailed instructions on its website as how to respond to authorities in case of an accident. *See* Tr. 381. The ALJs appear to place little value on the provision of a digital copy of the insurance card and online instruction, insinuating that only a physical card and hard-copy communication of instructions would be valid. Such concerns should be summarily dismissed, as use of digital communications technology to provide important information to drivers is entirely reasonable in light of the widespread use of such practices across the country and the technology-oriented nature of Lyft's platform. *See* 235-37.

Contrary to the ALJs' findings, the above safety measures combine to establish a comprehensive safety plan designed to ensure that each vehicle used under Lyft's platform remains safe.

The above-described measures are particularly appropriate when viewed in the proper context of the impacts of the TNC model. By offering a platform enabling drivers to connect to passengers requiring transportation, the TNC model is inherently decentralized in a manner distinct from a traditional taxicab operation. As stated by Lyft's witness, "Lyft is trying to get everyday, the safest of everyday people, but everyday people nonetheless, non-professional drivers, to participate as drivers on the Lyft platform." *See* Tr. 236-237; *see also* Lyft M.B., p. 23. To require drivers providing service under a TNC platform to report to a centralized garage and/or undergo daily inspections would strongly discourage such individuals from registering as drivers on the platform, thereby eliminating the availability of efficient TNC rides for passengers. This outcome becomes even more unreasonable upon consideration that the majority of drivers operating under Lyft's TNC platform log 15 or less hours per week of driving time through the platform. *See* Lyft M.B., p. 24 *citing* Tr. 321. Therefore, Lyft developed a safety plan conducive to the decentralized nature of TNC operations, but designed to provide an added layer of safety protection in recognition of the dual-use of the drivers' vehicles for personal use and service under the platform.

In sum, Lyft's proposed safety plan is sufficient to ensure the safety and integrity of vehicles and drivers in service under the platform without additional modifications. The capacity for Lyft's proposed TNC platform to meet the recognized public need for additional transportation resources depends largely on the development of a robust and geographically diverse driver pool. *See* Tr. 236. Specifically, Lyft's TNC platform is uniquely positioned to serve communities currently underserved by traditional transportation resources because the

platform incentivizes local residents to offer transportation to their neighbors. *See* Tr. 236, 272. However, if the Commission applies overly restrictive age and mileage restrictions, the Commission risks imbuing the proposed platform with an inherent discrimination, as such policies may limit the available pool of drivers in lower-income communities. While the Commission's previously articulated 8-year and 100,000-mile limitations may be appropriate for higher-mileage traditional commercial taxicabs, Lyft submits that these restrictions are unnecessary for its TNC platform, where the vehicles generally remain primarily personal use vehicles offered for operation through the platform for less than 15 hours per week. *See* Lyft M.B., p. 24 *citing* Tr. 321. As an alternative to implementing the vehicle age and mileage restrictions, Lyft would not object to ensuring that the internal 19-point inspections are performed annually on each vehicle registered under the platform in Pennsylvania. *See* Tr. 312-13.

E. <u>Exception No. 5</u>. ALJs erred by finding that Lyft has not demonstrated financial fitness. (R.D., p. 27, F.F. 65-66).

The R.D. erred in finding that Lyft failed to produce evidence of financial fitness. The R.D. claimed that Lyft "provided no meaningful financial information which would permit the Commission to conclude that it had sufficient financial resources to meet its responsibilities." *See* R.D., p. 27. The R.D. based this conclusion on a finding that the financial information offered by Lyft was not specifically related to its Pennsylvania operations. *Id.* The ALJs' finding should be reversed, as Lyft demonstrated that it is has access to sufficient capital to fund its proposed operations.

In finding that Lyft "provided no financial information regarding its specific operation in Pennsylvania," the ALJs discounted testimony from Lyft establishing that the proposed TNC platform does not require ownership of localized physical assets in the manner that a traditional

motor carrier service would. *See* R.D., p. 27; *but cf.* Lyft M.B., p. 25 *citing* Tr. 294. Because Lyft furnishes a mobile platform that facilitates transportation networking, and it does not actually furnish vehicles or directly provide transportation, much of the investment requirement to operate the underlying technology is not tied to the local Pennsylvania operations. *See id.* Therefore, Lyft's testimony stating that the company has demonstrated sophistication and expertise in recently completing $250 million round of venture capital funding is more than adequate to establish that Lyft has sufficient resources to fund the proposed Pennsylvania operations. *See* Lyft M.B., p. 25. At minimum, the testimony merits a finding that Lyft has access to venture capital and can raise funds in quantities sufficient to meet its regulatory obligations in Pennsylvania. *See id.* Importantly, the Commission has previously applied the financial fitness factor in a flexible manner, noting that "the Regulation, however, is silent on what factors or monetary values need be considered to establish or meet the sufficient capital requirement." *In re Sutherland*, 2007 WL 1702999 (Penn.P.U.C., 2007).

However, to the extent that the Commission agrees with the ALJ that Lyft must provide some additional indication that Lyft has sufficient financial resources available to support Lyft's Pennsylvania operations, Lyft alternatively requests that the Commission approve the Application on condition that Lyft affirm that $1 million of its available funding will remain available for Pennsylvania operations. In either case, the Commission must reject the R.D.'s findings as to financial fitness and approve the Application.

F. <u>Exception No. 6</u>. ALJs erred in finding that Lyft is not committed to operating safely and legally. (R.D., p. 28, F.F. 68).

The ALJs adopted a narrow view of Lyft's compliance history and determined that Lyft is not committed to operating safely and legally. The ALJs inappropriately confined the scope of Lyft's compliance history to the company's response to an Interim Cease and Desist Order issued

by the ALJs on July 1, 2014, and a subsequent Cease and Desist Order entered by the Commission on July 24, 2014. *See* R.D., p. 28. As a result, the ALJs found that the Application should be denied for failure to show a likelihood of compliance with Commission Regulations. *See id.* This analysis contains no account of multiple additional factors indicating that Applicant is responsive to the Commission's directives and committed to operating safely and legally.

The R.D. stated that Lyft "continued to operate after the July 1 and July 24, 2014 Orders directing it to cease and desist." R.D., p. 29. However, the ALJs failed to weigh the potential violations of July 1 and July 24 Orders against the composite backdrop of Lyft's demonstrated commitment to satisfy the Commission's regulatory directives. *See* Lyft M.B. 27-28. As the Commission's Regulations and precedent clearly establish that the public interest may weigh in favor of granting application for Certificates of Public Convenience where any regulatory violations are counterbalanced by public need and further actions of the applicant, the Commission should grant the Application, permit Lyft to continue meeting the transportation needs of the public, and defer enforcement matters to the ongoing Complaint proceeding at Docket No. C-2014-2422713.

Contrary to the ALJs' observation, Lyft has consistently sought to comply with the Commission's requirements, as evidenced by the following:

- Submission of the Application and the approved ETA Application. *See* Lyft, M.B., pp. 1-2.
- Revising the Application to clarify that vehicles used in conjunction with the platform will be subject to potential inspection by Commission enforcement staff. *See* Tr. 267.
- Complying with Commission procedures regarding production of confidential or trade secret information. *See* Lyft M.B., pp. 3-4.
- Providing data requested by the ALJs' July 31 Interim Order. *See* Tr. 248-254.

- Providing detailed insurance documents setting forth the terms and conditions applicable to each of Lyft's insurance policies. Tr. 442-443.

- Modifying its original proposal to offer excess liability insurance coverage during Periods 2 and 3 and offering primary insurance coverage for vehicles with the platform during both periods. Tr. 262.

- Proposing $1 million policy limits for primary auto liability insurance offered for Periods 2 and 3. Tr. 262.

- Revising the Application to confirm that passenger receipts shall include the Commission's customer complaint hotline and website. *See* Tr. 267.

As discussed in detail in Lyft's Main Brief, the Commission's Policy Statement setting forth the factors to be addressed in reviewing applications for motor carrier authority require consideration of an applicant's compliance record as a component of the general analysis. *See* Lyft M.B., p. 26 *citing* 52 Pa. Code § 41.14. On balance, the two potential violations cited by the ALJs' are closely related and still under investigation. As the Commission has previously held that a public utility committing "[t]wo adjudicated violations over the span of three years" did not demonstrate a "propensity" to operate outside the law, the Commission should not dismiss the instant Application where Lyft has balanced the alleged violations with the above-referenced significant modifications designed to achieve compliance with the Commission's regulatory guidelines.

Additionally, as addressed in Lyft's Main Brief, the necessity of the proposed service should be considered in any evaluation of the impact of potential violations of the Commission's laws or regulations on the outcome of this Application proceeding. As recounted in Lyft's Main Brief, the citizens of Allegheny County have publicly demanded the proposed TNC platform. The below sample of representative comments highlights the value offered by Lyft's platform:

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 Fowler	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

See Lyft M.B., p. 18. Further, although the service provided under Lyft's ETA is not binding on the Commission's decision in this proceeding, the Commission should also pay heed to Lyft's record of customer service under the ETA. Of note, the Commission has not received <u>any</u> Complaints from drivers or passengers using the platform since issuance of Lyft's ETA on August 14, 2014. *See* Lyft M.B., p. 25. This is particularly meaningful as Lyft modified the electronic receipts delivered to customers to conspicuously show the Commission's complaint hotline and website. *See id. citing* Tr. 274.

Other evidence cited by the ALJs as indicative of an inability to operate legally is unpersuasive and should be rejected. For example, the R.D. determined that Lyft's failure to develop a plan to monitor vehicle and driver safety also indicates an inability to operate legally.

See R.D., p. 29. As addressed above, the record shows that Lyft developed a thorough and appropriate plan to ensure the safety of vehicles and drivers registered under the platform. *See* Exception No. 4, *supra.* Similarly, the ALJs alleged that Lyft had not sufficiently informed itself of its compliance obligations in Pennsylvania. *See* R.D., p. 29. This finding ignores the fact that, although Mr. Okpaku appeared on behalf of Lyft to testify as to the company's proposed Application, the witness also clarified that Lyft has various departments within the organization to address ongoing regulatory obligations, including legal, operations, and engineering departments. *See* Lyft M.B., p. 25.

In sum, the ALJs erred in determining that Lyft is not committed to operating safely and legally. When taken out of a vacuum and considered in the appropriate context, Lyft's commitment to safety and compliance is evident. The Commission should reject the R.D.'s findings as to Lyft's commitment to operate safely and legally, and approve the Application.

III. CONCLUSION

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

(1) Grant the Exceptions of Lyft, Inc.;

(2) Approve the Application and grant the requested authority to offer experimental Transportation Network Company Service in Allegheny County; and

(3) 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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