

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IN RE:**

**APPLICATION OF**

**A-2014-24105045**

**LYFT, INC.**

**PROTESTANTS' EXCEPTIONS TO THE RECOMMENDED  
DECISION OF  
ADMINISTRATIVE LAW JUDGES**

Protestants, Concord Limousine, Inc., and Executive Transportation Company, Inc. (“Limousine Protestants” (both matters)), and Protestants, Aceone Trans Co., AF Taxi, Inc. AG Taxi, Inc. AGB Trans, Inc., Almar Taxi, Inc. ATS Cab, Inc, BAG Trans, Inc., BNG Cab Co., BNA Cab Co., BNJ Cab, Inc., Bond Taxi, Inc., BSP Trans, Inc., Double A Cab Co., FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc. GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., Jaydan, Inc. LAN Trans, Inc., LMB Taxi, Inc. MAF Trans, Inc., MDS Cab, Inc., MG Trans Co., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., Rosemont Taxicab Co., Inc., S&S Taxi Cab, Inc., SAJ Trans, Inc., Saba Trans, Inc., SF Taxi, Inc., Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., VAL Trans, Inc., VB Trans, Inc., and VSM Trans, Inc. (“Medallion

Taxicab Protestants” (Pennsylvania application only)) and Protestants, BM Enterprises, Inc., t/a A.G. Taxi, Bucks County Services, Inc., Dee Dee Cab Company, Germantown Cab Company, Ronald Cab, Inc., t/a Community Cab, Shawn Cab, Inc., t/a Delaware County Cab and Sawink, Inc., t/a County Cab (“Non-medallion Taxicab Protestants” (Pennsylvania application only)), hereby submit their Exceptions to the Recommended Decision of the Administrative Law Judges (ALJ’s) in this matter.

I. EXCEPTION TO CONCLUSIONS OF LAW NO. 4 AND 5

1. Conclusion of Law No. 4 states that “[i]t is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.”

2. Conclusion of Law No. 5 states that the “Commission has jurisdiction over this matter as the application seeks authorization to provide “experimental service,” which is a class of motor carrier service defined under 52 Pa. Code §29.13.”

3. Protestants take exception to Conclusions of Law No. 4 and 5 on the ground that it not supported by the facts and is an improper interpretation of the law.

4. Accordingly, it cannot form the basis of the Commission’s conclusion that it has jurisdiction in this matter because the Applicant does

not fall within the definition of “public utility”, “common carrier” or “motor carrier.”

5. Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, requires every public utility, including every motor carrier, to obtain a certificate of public convenience prior to beginning service.<sup>1</sup>

6. The Commission has the power to grant an application for a certificate of public convenience to provide “motor carrier” service only if the applicant meets the definitions of “public utility,”<sup>2</sup> “common carrier,”<sup>3</sup>

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<sup>1</sup> 66 Pa. C.S. §1101 states: “Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.”

<sup>2</sup> 66 Pa. C.S. §102 defines the term “public utility”, in pertinent part, as follows:

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
  - ...
  - (iii) Transporting passengers or property as a common carrier.

<sup>3</sup> 66 Pa. C.S. §102 defines the term “common carrier” as follows: “Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property,

and “motor carrier”<sup>4</sup> that have been adopted by the General Assembly in Section 102 of the Public Utility Code, 66 Pa. C.S. §102.

7. In accordance with these definitions, a “motor carrier” owns and operates motor vehicles and equipment to transport passengers and property for compensation.

8. This matter involves two applications filed by Lyft, Inc. (“Applicant”), a “**transportation network company**” (“TNC”), for authorization to operate as a “**motor carrier**” to provide “**experimental service**” through a “**ridesharing** network.”

9. Contrary to its proposal to operate as a “motor carrier”, the Applicant does not propose to own or operate any motor vehicles nor does it propose to transport any passengers or property.

10. Rather, the Applicant proposes to facilitate for-hire transportation by private individuals, who do not have certificates of public convenience, through a commercial ridesharing network using its smartphone application.

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between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, but shall not include contract carriers by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.”

<sup>4</sup> 66 Pa. C.S. §102 defines the term “motor carrier” as follows: “A common carrier by motor vehicle, and a contract carrier by motor vehicle.”

11. Accordingly, the Applicant does not meet the definition of “public utility” or “common carrier” or “motor carrier” contained in Section 102 of the Public Utility Code, 66 Pa. C.S. §102.

12. On this basis alone, the Commission must deny the application. The Commission simply lacks the power to grant the present application, just as it lacks the power to grant an application for a certificate of public convenience to operate a fast food restaurant.

13. The proposed service in both instances falls outside of the scope of the Commission’s jurisdiction and powers.

14. It is a well-established principle of administrative law that the powers of an administrative agency are not boundless. *See West Penn Railways Company v. Pennsylvania Public Utility Commission*, 4 A.2d 545 (Pa. Super. 1939).

15. As creatures of statute, administrative agencies may only exercise those powers that have been conferred upon them by the General Assembly in their enabling acts. *See Susquehanna Regional Airport Authority v. Pennsylvania Public Utility Commission*, 911 A.2d 612 (Pa. Cmnlth. 2006).

16. Administrative agencies have no inherent power and may do only those things that the legislature has expressly or by necessary

implication placed within their power to do. *Naylor v. Township of Hellam*, 773 A.2d 770, 773-773 (Pa. 2001).

17. An administrative agency “cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant: *it is the law which is to govern rather than departmental opinions in regard to it.*” *Commonwealth v. American Ice Company*, 178 A.2d 768, 773 (Pa. 1962) (quoting *Federal Deposit Insurance Corp. v. Board of Finance & Revenue of Commonwealth*, 84 A.2d 495, 499 (Pa. 1951) (emphasis in the original)).

18. Unlike the legislatures in other states, the Pennsylvania General Assembly has not empowered either of Pennsylvania’s public utility commissions to grant certificates of public convenience authorizing the operation of transportation network companies (“TNC’s), nor has it empowered them to promulgate regulations to redefine or expand the term “public utility.”<sup>5</sup>

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<sup>5</sup> The California Public Utilities Commission has promulgated a regulation defining a “transportation network company” (“TNC”) as “a company that uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles.” Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, California Public Utilities Commission, Rulemaking 12-12-11 (Filed December 20, 2012) (copy attached). But the Commission does not have the power to expand its jurisdiction in this fashion.

19. Neither the Public Utility Code, 66 Pa. C.S. §§101-3316, nor the Parking Authorities Law, 53 Pa. C.S. §§5501-5517 and §§5701-5745, contain any provisions granting such power.

20. The scope of the Commission’s regulatory power is limited to public utilities as defined by the General Assembly in Section 102 of the Public Utility Code, 66 Pa. C.S. §102. It defines the term “public utility” as follows:

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
  - ...
  - (iii) Transporting passengers or property as a common carrier.

21. Accordingly, since TNC’s are not within the scope of the definition of “public utility”, TNC’s are not within the regulatory jurisdiction of the Commission.

22. The Commission is therefore not empowered to entertain an application for authorization to operate a TNC, which is not what has been submitted to the Commission for consideration in the present proceeding.

23. Obviously, the Applicant realizes that the Commission is not empowered to grant a TNC certificate and has, therefore, styled its Applications as applications for authorization to provide **motor carrier service**.

24. But the Applicant is, in reality a TNC, not a motor carrier, and its attempt to overcome the Commission's lack of statutory authority to give it what it wants by styling its Applications as something they are not is like trying to fit a square peg in a round hole.

25. It does not fit.

26. The transportation of passengers or property as a common carrier is clearly within the General Assembly's definition of the term "public utility" and therefore the Commission has the power to entertain an application for authorization to operate as a "common carrier", including authorization to operate as a "motor carrier" as these terms are defined by the General Assembly.

27. But the Commission is not empowered to grant an application filed by an entity that does not meet the General Assembly's definition of "common carrier."

28. And by the Applicant's own admission it is not a transportation company and does not provide any transportation service.

29. Accordingly, the Commission may not grant the Applications.

30. The Public Utility Code defines the term "motor carrier" as "[a] common carrier by motor vehicle, and a contract carrier by motor vehicle." 66 Pa. C.S. §102.

31. The Public Utility Code defines the term “common carrier” as follows:

Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, **but shall not include** contract carriers by motor vehicles, or **brokers**, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

66 Pa. C.S. §102 (emphasis added).

32. By its own admission, then, the Applicant is not a “motor carrier” within the meaning of the Public Utility Code because it does not transport passengers.

33. Accordingly, the Commission may not approve the Applications.

34. Even if the Applicant were not denying that it is a transportation company and that it does not provide transportation service, it still would not meet the definition of “motor carrier” within the meaning of the Public Utility Code because it meets the definition of “broker” within the meaning of Section 2501 of the Public Utility Code, 66 Pa. C.S. §2501, which is explicitly excluded from the definition of “motor carrier.” Section 2501 defines the term “broker” as follows:

Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. §2501

35. In its application, the Applicant indicates that it will use its mobile software application to facilitate ridesharing arrangements between prospective passengers and private individuals using their own vehicles, who will provide the actual transportation service; the Applicant does not propose to provide transportation service itself.

36. Based on the foregoing, Applicant proposes to function as a "broker" within the meaning of 66 Pa. C.S. §2502 and not as a "motor carrier" within the meaning of 66 Pa. C.S. §102.

37. Accordingly, the application should be denied because the Commission may not authorize a person or corporation to provide motor carrier service where the person or corporation only proposes to procure such service on behalf of third parties, but does not propose to provide such service itself, either directly or indirectly.

## CONCLUSION

For all of the foregoing reasons, the Applications should be denied.

Respectfully submitted,

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Date: October 25, 2014

CERTIFICATE OF SERVICE

I, Michael Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Brief to all parties on the Commission Service list.

*Michael S. Henry*

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Michael S. Henry

Date: October 25, 2014