



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

October 28, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lyft, Inc.; Docket No. C-2014-2422713

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Preliminary Objections of Lyft, Inc. to Complaint of the Bureau of Investigation and Enforcement in the above-captioned 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

A handwritten signature in black ink, appearing to be 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to Lyft, Inc.

/lmc
Enclosure

c: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

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Michael L. Swindler, Esq.
Stephanie M. Wimer, Esq.
Wayne T. Scott, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
mwindler@pa.gov
stwimer@pa.gov
wascott@pa.gov



Adeolu A. Bakare
Counsel to Lyft, Inc.

Dated this 28th day of October, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT	:	
Complainant	:	
	:	Docket No. C-2014-2422713
v.	:	
	:	
LYFT, INC.	:	
Respondent	:	

**LYFT, INC.’S PRELIMINARY OBJECTIONS TO AND MOTION TO DISMISS
THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
FIRST AMENDED COMPLAINT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Lyft, Inc. (“Applicant” or “Lyft”), by undersigned counsel and pursuant to 52 Pa. Code § 5.101(a)(1), respectfully submits these Preliminary Objections asking for dismissal of the Complaint filed by the Bureau of Investigation and Enforcement (“I&E”) at the above-captioned docket pursuant to 52 Pa. Code § 5.101(a)(1), (3)-(4).

2. In disposing of Preliminary Objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must review the Complaint in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

3. The Commission should dismiss I&E's Complaint because (i) the Commission lacks jurisdiction to grant the requested relief and (ii) the Complaint fails to state a claim on which relief could be granted. *See* 52 Pa. Code § 5.101(a)(1), (3)-(4),

4. First, Lyft did not engage in the business of a broker for any trip alleged in the Amended Complaint. As acknowledged by the ALJs in their Recommended Decision, Lyft is not properly classified as a broker. *See* Recommended Decision at 17 (Oct. 10, 2014). Moreover, as defined in the Public Utility Code, a broker sells or offers for sale transportation by a motor carrier, or holds out as an entity furnishing, providing or arranging service directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a motor carrier. 66 Pa. C.S. § 2501(b).¹ Lyft does not sell, offer for sale, furnish, provide or arrange transportation; rather, Lyft offers a platform that drivers and passengers may use to connect.

5. The Commission has referred to a broker as one who “arranges for the transportation of goods” and “acts as a middleman to bring together shippers . . . and carriers that are capable of performing the transportation.” *Re Friedman's Exp. Inc.*, 73 Pa. P.U.C. 152 (1990) (emphasis added). Additionally, the majority, if not all reported cases where unauthorized brokerages were sanctioned emphasized the broker's role in “arranging” transportation. *See, e.g., Waddington v. Pa. Public Utility Comm'n*, 670 A.2d 199 (Pa. Commw. 1995) (unauthorized

¹ A “broker” is

[a]ny 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

66 Pa. C.S. § 2501(b).

brokerage where party arranged transportation, meals, admission tickets, entertainment and lodging); *Pa. Public Utility Comm'n v. Baran*, 1982 WL 213174 (Pa. P.U.C. Mar. 8, 1982) (sanction of broker who arranged transportation using uncertified motor carrier); *Application of PTM Transportation, LLC for a Brokerage License*, 2013 WL 6835119 (Pa. P.U.C. Dec. 19, 2013) (noting that “all duties related to brokering services” included “contacting and arranging transportation service”). The case law reflects that arranging means taking care of the necessary steps to make provision for the transportation transaction so that the passenger only interacts with the carrier at the point of service. *See Blue & White Lines, Inc. v. Waddington*, 1995 WL 945180, at *6 (Pa. P.U.C. 1995) (“Respondent, by her own admission, arranged for the transportation for Mrs. Ingram by van which picked her up at Cresson.”); *Application of PTM*, 2013 WL 6835119 at *1 (noting that the broker's customer requests were “communicated . . . to a third party carrier who dispatches the call and provides the transportation”); *Application of Am. Med. Response Mid-Atlantic, Inc. for a Brokerage License*, 2009 WL 1351741 (Pa. P.U.C. 2009) (“[E]mployees will receive calls from parties requesting service and will make calls to motor carriers to provide the required service.”).

6. Lyft does not serve as a middleman; rather, Lyft provides a forum in which drivers and passengers become aware of each other so that they might interact and arrange for transportation directly. Lyft does not direct drivers to provide rides at particular times or locations. As such, Lyft does not, and did not for trips alleged in the Amended Complaint, actively arrange for transportation. Therefore, Lyft did not broker transportation as alleged by the Amended Complaint.

7. Second, Lyft denies facilitating or providing transportation service subject to the Commission's jurisdiction during the time periods referenced in the Amended Complaint. I&E

alleges that Lyft violated Section 1101 of the Public Utility Code by providing transportation service without authority from the Commission. *See* Amended Complaint, p. 9. Section 1101 of the Public Utility Code prohibits public utilities from offering service without authority from the Commission. 66 Pa. C.S. § 1101. Section 102 of the Public Utility Code defines transportation public utilities as “[a] common carrier by motor vehicle, and a contract carrier by motor vehicle.” 66 Pa. C.S. § 102. Under Sections 102 and 2501(b) of the Public Utility Code, both common carriers and contract carriers are limited to entities providing transportation service “for compensation.” 66 Pa. C.S. §§ 102, 2501(b).

8. In this case, Lyft did not begin charging fares for rides until the company began operating under its ETA authority. For all prior periods, Lyft operated the platform under a donation system, where individual drivers who use Lyft’s platform offer rides and accept both nonpayment or purely voluntary donations to the extent, and in such amounts, as any passenger may elect to contribute. Accordingly, for the referenced time periods alleged in the Amended Complaint, Lyft did not facilitate or provide transportation service for compensation and therefore committed no violation of Section 1101 of the Public Utility Code.

9. Third, the Commission should dismiss the requested relief because I&E is authorized only to issue civil penalties for violations of the Public Utility Code, its Regulations, and final Orders entered by the Commission. 66 Pa. C.S. § 3301. The Amended Complaint proposes civil penalties, in primary part, for alleged violations of the Order on Interim Emergency Relief issued by Administrative Law Judges (“ALJs”) Jeffrey A. Watson and Mary D. Long on July 1, 2014 (“ALJ Interim Emergency Order”) and the Opinion and Order entered by the Commission on July 24, 2014. (“PUC Interim Emergency Order”). As both Orders are interlocutory and not final, the Commission lacks jurisdiction to grant the requested relief. *See* 52

Pa. Code § 5.101(a)(1); *see also* ALJ Interim Emergency Order, p. 13 (clarifying that “the grant of relief by interim emergency order in proceedings at PUC Docket No. P-2014-2426847 is certified to the Commission as a material question requiring interlocutory review.”); *see also* PUC Interim Emergency Order, p. 31 (establishing that “an interim emergency order shall expire upon entry of the final Commission order which ends the pending proceeding unless otherwise specified.”). For the same reason, the pleading lacks sufficient specificity as to the applicable legal grounds and, alternatively, is legally insufficient. *See* 52 Pa. Code § 5.101(a)(3)-(4).

10. Finally, I&E wrongly requests civil penalties on a per-ride basis and therefore that request should be dismissed. *See* 52 Pa. Code § 5.101(a)(3). I&E defines the alleged violation as follows:

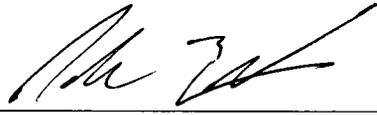
Respondent brokered and provided for the transportation of persons for compensation in the Commonwealth of Pennsylvania without holding authority to do so...

Amended Complaint, p. 10. Similarly, the PUC Interim Emergency Order stated that “Lyft, Inc., shall immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers.” PUC Interim Emergency Order, p. 31. However, the proposed civil penalty set forth in Paragraph 31 of I&E Amended Complaint contemplates a penalty for each distinct ride obtained through the platform. *See* Amended Complaint, p. 10. This penalty wrongly assumes that Lyft's alleged violations are subject to a per-day penalty, though the activities at issue are not readily segmented into discrete individual violations.

WHEREFORE, for all the foregoing reasons, the Commission should dismiss I&E's Amended Complaint in its entirety.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By  _____

James P. Dougherty (Pa. I.D. 59454)

Adeolu A. Bakare (Pa. I.D. 208541)

Barbara A. Darkes (I.D. No. 77419)

McNees Wallace & Nurick LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

jdougherty@mwn.com

abakare@mwn.com

bdarkes@mwn.com

Counsel to Lyft, Inc.

Dated: October 28, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT
Complainant

v.

LYFT, INC.

Respondent

Docket No. C-2014-2422713

NOTICE TO PLEAD

To: Bureau of Investigation and Enforcement

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully Submitted,

McNEES WALLACE & NURICK LLC

By


James P. Dougherty (Pa. I.D. 59454)
Adeolu A. Bakare (Pa. I.D. 208541)
Barbara A. Darkes (I.D. No. 77419)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300
jdougherty@mwn.com
abakare@mwn.com
bdarkes@mwn.com

Counsel to Lyft, Inc.

Dated: October 28, 2014