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October 27, 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., For Emergency Temporary Authority to Offer
Experimental Transportation Network Service Between Points in Allegheny
County, PA; A-2014-2432304**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Lyft, Inc. Petition for Partial Reconsideration of Order Regarding Emergency Temporary Authority Dated October 10, 2014 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 
Adeolu A. Bakare

Counsel to Lyft, Inc.

/lmc
Enclosure

c: Certificate of Service

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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 27th day of October, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., For Emergency :
Temporary Authority to Offer Experimental : Docket No. A-2014-2432304
Transportation Network Service :
Between Points in Allegheny County, PA :

**PETITION FOR PARTIAL RECONSIDERATION OF ORDER REGARDING
EMERGENCY TEMPORARY AUTHORITY DATED OCTOBER 10, 2014**

Pursuant to Section 703(g) of the Pennsylvania Public Utility Code and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, Lyft, Inc. files this Petition for Partial Reconsideration of the Order Regarding Emergency Temporary Authority dated October 10, 2014.

I. INTRODUCTION

1. In considering Lyft's Application for Emergency Temporary Authority ("ETA Application"), the Commission explained that it "strives to ensure that its current regulatory structure is not a barrier to technological advances and desirable changes in the transportation industry." Order at 12, Pennsylvania Public Utility Commission (July 24, 2014) ("July 24 Order").

2. Consistent with that goal, the Commission granted Lyft's ETA Application, bringing two important changes to the Pennsylvania transportation landscape: (1) millions of Pennsylvanians are now closer to enjoying reliable, affordable transportation, and (2) countless others now have an opportunity to provide that service and to foster their entrepreneurial spirit in these challenging economic times. Lyft appreciates the Commission's willingness to encourage technological and economic development in Pennsylvania.

3. However, that development continues to be threatened by two conditions the Commission imposed on Lyft when it granted its ETA Application. First, the Commission "require[d] Lyft to direct all operators/drivers to notify their insurer, in writing, of their intent to operate in Lyft's service" (the "insurance disclosure requirement"). *Id.* at 18 (emphasis in original). Second, the Commission prohibited drivers using the Lyft app from operating vehicles that are more than 8 years old or have more than 100,000 miles on the odometer (the "age/miles requirement"). *Id.* at 15.

4. Because those conditions do not advance the Commission's "fundamental" goal of "public safety," *id.* at 14, and because of the severe consequences they pose to Lyft's ability to satisfy the "immediate need" in the Pennsylvania market for its service, *id.* at 10, Lyft respectfully requests that the Commission reconsider its decision for the reasons discussed below. In addition, the insurance disclosure requirement warrants reconsideration because it violates Lyft's rights under the First Amendment.

II. BACKGROUND

5. On April 3, 2014, Lyft filed an application for experimental authority to operate its platform in Allegheny County ("Experimental Application"). The Experimental Application was filed at Docket No. A-2014-2415045 and is currently pending before the Commission.

6. On July 16, 2014, Lyft filed its ETA Application to operate its platform in Allegheny County.

7. On July 24, 2014, the Commission issued its order. The Commission found "that an immediate need for Lyft's service exists and that there is a substantial benefit to be derived from the initiation of a competitive service." July 24 Order at 10. Accordingly, it approved the

ETA Application and authorized Lyft to operate in Allegheny County for 60 days subject to several conditions. *See id.* at 22-23.

8. The Commission's approval was based in part on Lyft's meeting "the various sub-standards within the fitness requirement," *id.* at 10, including its commitment to driver and vehicle safety. The July 24 Order summarizes the salient aspects of Lyft's commitment to safety as follows:

Driver Safety

a. *Criminal Background Checks.* Lyft conducts a national criminal background check with respect to each driver before the driver may access the App-based platform to receive requests for transportation from passengers. A match on the national sex offender registry or a conviction that appears on a criminal background check within the past seven years for crimes of violence, sexual abuse, felony, robbery, or felony fraud, automatically and permanently disqualifies an individual from acting as a driver.

b. *Driving History Record.* Lyft obtains a driving history record for each driver applicant and rejects applicants if, within the past three years, the record shows a major violation (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license), or more than three moving violations.

c. *Drugs or Alcohol.* Lyft maintains a zero-tolerance policy on the use of drugs or alcohol while the driver is available on the Lyft platform. Notice of this zero-tolerance policy is on Lyft's website along with procedures to report a complaint when passengers reasonably suspect a driver was under the influence of drugs or alcohol during the course of the ride. Lyft will immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy, and such suspension will last the duration of Lyft's investigation into the incident.

Vehicle Safety

a. *Inspections.* Lyft will require vehicles used in conjunction with the platform to pass annual safety inspections in compliance with Pennsylvania Department of Transportation Regulations and consistent with the Commission's Vehicle Safety Regulations. See 75 Pa.C.S. Chapter 47; 67 Pa. Code §§ 175.61-80; 52 Pa. Code §§ 29.402 and 29.405. Lyft further acknowledges that vehicles used in conjunction with Lyft's platform are subject to inspection by Commission enforcement officers. Additionally, Lyft requires drivers' vehicles to undergo and pass a 19-point safety inspection before the vehicle provides transportation network service that includes a check for cleanliness and addresses the following vehicle components: foot brakes, emergency brakes, steering mechanism, windshield, rear window and other glass, windshield wipers, headlights, tail lights, turn indicator lights, stop lights, front seat adjustment mechanism, doors (open, close lock), horn, speedometer, bumpers, muffler and exhaust system, conditions of tires, including tread depth, interior and exterior rear view mirrors, and safety belt for driver and passengers.

b. *Vehicle Age and Type.* Lyft requires drivers to use motor vehicles that have four doors and have a seating capacity of eight passengers or fewer. Eligible vehicles include street-legal coupes, sedans, or light-duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks.

See id. at 6-7.

9. The Commission also found that the levels of insurance proposed by Lyft exceed the minimum requirements for motors carriers. *See id.* at 18. The July 24 Order summarized Lyft's commitment to satisfying Pennsylvania's insurance requirements, as follows:

a. *\$1 million of liability coverage per incident.* Lyft maintains liability insurance in the amount of \$1 million to cover a driver's liability for bodily injury, death or property damage, which exceeds the Commission's minimum requirement of \$35,000. The terms and conditions for this policy provide that this coverage will apply from the time a driver accepts a trip request through the App until the completion of a trip. This coverage additionally includes

first party medical benefits in the amount of \$25,000 and first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians. This policy protects drivers and passengers using Lyft's platform and third parties when injured through an accident caused by the driver using Lyft. This policy is designed to apply even if the driver's personal auto insurance coverage denies coverage entirely or covers only a portion of the driver's liability. This policy also includes uninsured/underinsured motorist coverage of \$1 million per incident, which will apply if another motorist causes an accident with a driver's vehicle and does not carry adequate insurance. In the event of injury caused by an uninsured/underinsured motorist, this policy protects drivers and passengers using Lyft's platform and third parties.

b. *\$50,000/\$100,000/\$25,000 of contingent coverage between trips.* If the driver's personal policy declines coverage during the time that a driver using Lyft's platform is available on the Lyft platform, but between trips with passengers (prior to being matched), Lyft has procured a policy that covers liability up to \$50,000 per person for bodily injury, \$100,000 per accident, and \$25,000 for property damage.

c. *Contingent comprehensive/collision coverage.* Finally, for drivers carrying comprehensive and/or collision coverage on their personal policies, Lyft offers contingent comprehensive and/or collision coverage up to \$50,000 per occurrence with a \$2,500 deductible

See id. at 5-6.

10. However, the July 24 Order also imposes, among other stipulations, two requirements that threaten the viability of Lyft's operations in Allegheny County. First, it requires *Lyft* to direct drivers who use its platform to notify their personal insurer, in writing, of their intent to offer rides using the Lyft app. *Id.* at 18. Second, it prohibits drivers using the Lyft app from offering rides using vehicles that are either more than 8 years old or have more than 100,000 miles on the odometer. *Id.* at 15.

11. On September 29, 2014, Lyft filed a petition seeking to extend its ETA and to amend the insurance disclosure and age/miles requirements.

12. On October 10, 2014, the Commission granted Lyft's request to extend its ETA, but denied its request to eliminate or modify the insurance disclosure and age/miles requirements. *See* Order at 4-5, Pennsylvania Public Utility Commission (October 10, 2014) ("October 10 Order"). The Commission also offered additional reasons in support of those requirements. *See id.* at 4-5.

13. With respect to the insurance disclosure requirement, the Commission stated that "there is a public safety and driver protection benefit to have this notice." *Id.* at 5. First, the Commission said that Lyft's "new and innovative technology... warrants transparency to all affected entities, including insurers of Lyft's drivers." *Id.* It also stated that the disclosure requirement "does not interject Lyft into the driver/insurer relationship." *Id.* The Commission noted that Lyft requires individuals using the Lyft app as drivers to notify their personal insurers in order to avail themselves of comprehensive/collision coverage supplied by Lyft. *Id.* at 5, n.4.

14. As to the age/miles requirements, the Commission said that: "Lyft provides no evidence that it independently inspects the vehicles... and appears to rely solely on PennDOT's annual inspections and any customer feedback, via its app..." *Id.* at 4.

15. Fortunately, the Commission maintains discretion to alter its findings as time and experience may require. *See* July 24 Order at 11 ("[N]one of the findings or conclusions reached in this order should be seen as limiting our future deliberations on matters relating to TNCs as this new service, and our understanding of it, evolve."). Accordingly, Lyft submits this Petition for Partial Reconsideration to ensure that the Commission had a full and complete understanding

of Lyft's opposition to the insurance disclosure and age/miles requirements and to address the new bases offered by the Commission in support of the requirements.

III. STANDARD OF REVIEW

16. Under Section 703(g) of the Public Utility Code, "[t]he commission may, at any time... amend any order made by it." 66 Pa. C.S. § 703(g).

17. Parties submitting petitions for reconsideration "may properly raise matters designed to convince" the Commission that it should amend an order. *Application of Consolidated Rail Corporation, et. al.*, 2012 WL 3042071 (Pa. P.U.C. 2012). The Commission has advised, however, that "such petitions are likely to succeed only when they raise new and novel arguments not previously heard" or "considerations which appear to have been overlooked or not addressed by the Commission." *Id.* (internal quotes and citations omitted).

18. Lyft submits that each argument or consideration set forth in this Petition is either new and novel, was overlooked, or was not addressed by the Commission in rendering the October 10 Order.

IV. ARGUMENT

19. Lyft is committed to working with the Commission to ensure that its service complies with all necessary requirements and that it places public safety at a premium. However, Lyft remains concerned that the insurance disclosure requirement and age/miles requirement will not increase public safety and will instead only serve to inhibit Lyft's ability to satisfy the "immediate need" on which the ETA Application was granted. *See* July 24 Order at 3.

A. The insurance disclosure requirement should be eliminated or modified.

(i) The disclosure requirement does not enhance public safety.

20. The Commission recognizes that Lyft's insurance policies exceed what is required under Pennsylvania law. *See* July 24 Order at 17-18.

21. In considering Lyft's compliance with the Commission's insurance requirements, the Commission identified what it considered to be four relevant "stages" to an individual's use of Lyft's service: "Stage 0 – Driver is driving for personal reasons and the App is closed. 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." *Id.* at 17.

22. With respect to Stages 1 through 3, the Commission "accept[ed] Lyft's proposed insurance levels during these periods as in compliance with our regulations, with several caveats." *Id.* at 18. The Commission required that Lyft's insurance coverage, as opposed to the driver's, must be primary during these three stages, and indeed, Lyft has amply satisfied that requirement. During Stage 1, Lyft's \$50,000 per person/\$100,000 per accident/\$25,000 contingent liability coverage covering driver liability for bodily injury and/or property damage of passengers and/or third parties applies as primary in all instances where a driver's personal automobile insurance policy does not respond. Likewise, in Stages 2 and 3, Lyft's \$1 million liability and uninsured/underinsured policies apply as primary to a driver's personal automobile insurance policy.¹

23. Simply put, from the moment that a driver opens the Lyft app to the time when that driver finishes using the app, the driver is completely covered by Lyft's liability coverage as

¹ Lyft also has contingent comprehensive and collision policies, which apply to drivers who purchase collision and comprehensive coverage on their own personal policies in Stages 2 and 3.

primary to the driver's own personal insurance, and that coverage is far in excess of what is required by the Commission's regulations.

24. Because there is no dispute between Lyft and the Commission regarding insurance coverage during the time when an individual is using the Lyft app—the only time period covered by the Commission's jurisdiction—Lyft submits that any action it is required to take regarding drivers' use of a vehicle when they are *not* using the Lyft app and are simply using the vehicle for personal use would have absolutely no impact on driver and vehicle safety when the driver is using the app.

25. The Commission, however, has imposed an obligation on Lyft with regard to Stage 0—a time when it is undisputed that a driver has absolutely no connection to Lyft. The Commission initially asserted that, as to only Stage 0, there is a need "to avoid any confusion regarding the status of a driver's personal insurance coverage" during that time. *Id.* at 10. For that purported reason, the Commission "require[d] Lyft to direct all operators/drivers to notify their insurer, in writing, of their intent to operate in Lyft's service." *Id.* at 18 (emphasis added).

26. In the July 24 Order, the Commission did not elaborate on why using the Lyft app would generate confusion among drivers regarding the scope of their insurance policies, nor did it contend that forcing drivers to correspond with their insurance companies would have any impact on driver or vehicle safety.

27. In the October 10 Order, the Commission appears to have reversed course. There, the Commission did not discuss a need to eliminate confusion among drivers regarding their personal insurance coverage, but instead asserted that (i) the insurance disclosure requirement enhances "public safety and driver protection," and (ii) the requirement is necessary for

"transparency" purposes, i.e., the Commission essentially held that insurance companies had a right to know which of its drivers may work with Lyft. October 10 Order at 5.

28. Unfortunately, the Commission did not explain how the insurance disclosure requirement, which only applies to the time when a driver *is not* using the Lyft app, would benefit public safety while the driver *is* using the Lyft app. Because Lyft can envision no conceivable benefit to public safety from requiring drivers to correspond with their insurance companies regarding matters that have absolutely no bearing on Lyft's service, Lyft urges the Commission to eliminate the requirement.²

(ii) The disclosure requirement potentially harms individuals at the benefit of insurance companies.

29. Similarly, there is no connection between public safety and a need for "transparency" between drivers and their insurance companies. While Lyft does not disagree with the Commission that its app represents "new and innovative technology," *id.* at 5, it does not represent a significant change in the insurer-insured relationship from the perspective of drivers using the Lyft app.

30. In effect, drivers using the Lyft app operate their vehicles in connection with the operation of a business—*their* own business. Drivers using the Lyft platform operate their vehicles in much the same way that, for example, an individual would use their vehicle to

² This is different than the notice requirement imposed for Lyft's contingent and/or comprehensive collision coverage, which requires Lyft to notify the individuals using its app as drivers that Lyft offers contingent and/or comprehensive collision coverage if such individuals have obtained comprehensive and/or collision coverage on their personal automobile policy. *See* July 24 Order, p. 18. The October 10 Order incorrectly stated that Lyft furnished documentation evidencing that notice of its contingent and/or comprehensive collision coverage is provided to personal insurers. *See* October 10 Order, at 5, n.4. Lyft submitted documentation showing that notice of its contingent and/or comprehensive collision coverage is given to drivers, consistent with the July 24 Order granting ETA. *See* July 24 Order, p. 18.

periodically deliver homemade jam to customers. As sophisticated actors, insurance companies have had decades to determine how to address a situation where an individual uses his vehicle primarily for personal use, but also for occasional commercial use. Accordingly, there is no reason to believe that unprecedented "transparency" between insurer and insured is necessary, or more importantly, that such transparency will have any impact on operation of Lyft's service.

31. Further, Lyft is concerned that the Commission has not considered the harm the insurance disclosure requirement poses to drivers. Drivers voluntarily entered into contracts with insurers. Those contracts set forth the rights and obligations of each party, including the coverage period. Drivers necessarily relied on those terms in entering into those agreements, and it is likely that drivers specifically relied on the terms regarding disclosure of additional information. Now, however, the Commission is seeking to preempt those bargained-for agreements and to require drivers to disclose information regarding their use of the Lyft app regardless of whether the insurer has the right to know that information under the parties' agreement—absent any impact on public safety or insurance coverage during use of the Lyft app. The Commission should refrain from injecting itself into that contractual relationship.

32. Such restraint is particularly appropriate given that automobile insurance policies are generally of a very short duration, e.g., one year. This is not a situation where insurers locked themselves into contracts twenty years ago before the emergence of the Internet. The insurers in question have likely all entered into the policies in question years after the TNC model has been in widespread use. If insurers believe that the potential for one of its insured to use the Lyft app requires modifications to its policies, then those large, sophisticated entities are more than capable of protecting their own interests. As it is, the Commission is essentially acting as a surrogate for the insurance companies, choosing the interests of the insurers over the

insured. Lyft simply asks that the Commission not take sides in the insured-insurer relationship by forcing Lyft to require its drivers to make certain disclosures to their insurance companies.

(iii) The disclosure requirement violates Lyft's First Amendment rights.

33. Here, the Commission, a government body, is compelling Lyft to communicate to drivers using its app regarding commercial aspects of their relationship to one another and with third-party insurers. The disclosure required by the Commission therefore constitutes commercial speech and is entitled to First Amendment protection. *See Jordan v. Jewel Food Stores, Inc.*, 743 F.3d 509, 516 (7th Cir. 2014) (citing *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 482 (1989)); *id.* (explaining that the "hallmark of commercial speech" is that it "pertains to commercial transactions") (citation omitted). The First Amendment prohibits the government from such a disclosure unless it is "reasonably related to the State's interest in preventing the deception of consumers" and is "not unduly burdensome." *Dwyer v. Cappell*, 762 F.3d 275, 279 (3d Cir. 2014). Here, the Commission has failed to satisfy that burden.

34. Although the Commission has acknowledged that its fundamental goal is public safety, it has offered no explanation as to how the insurance disclosure requirement has any relevance to drivers' use of the Lyft app (beyond summarily asserting that the requirement does benefit public safety). Instead, the Commission's apparent goal is to ensure that a third party—insurance companies—receive an opportunity to object and modify or terminate its relationship with drivers. In other words, Lyft is being compelled by the government to speak for the sole purpose of protecting the economic interests of insurance companies. Because the First Amendment prohibits the government from forcing Lyft to engage in such speech, the insurance disclosure requirement violates Lyft's constitutional rights and should be stricken.

B. The age/miles restriction should be eliminated or modified because it does not benefit public safety.

35. In granting Lyft's ETA application, the Commission noted and credited Lyft's assurance that "its service will comply with the Commission's driver and safety regulations and vehicle safety regulations." July 24 Order at 15. Despite Lyft's strong commitment to safety, the Commission also required Lyft to ensure that none of its drivers use vehicles that are more than 8 years old or have more than 100,000 miles on the odometer. *Id.*

36. The Commission explained that it was requiring Lyft's vehicles meet this standard "[b]ecause Lyft drivers are using their personal vehicles, instead of taxicab or a limousine that is in the care of a transportation company..." *Id.* The Commission also asserted in support of the requirement that "Lyft provides no evidence that it independently inspects the vehicles used in its service and appears to rely solely on PennDOT's annual inspection and any customer feedback, via its app, that may occur, to ensure vehicles are roadworthy and suitable for use in passenger carrier service." October 10 Order at 4.

37. Taking the mileage requirement first, Lyft notes that 52 Pa. Code § 29.314, which the Commission cited in support of its Order, does not in fact include any limitation on mileage. Vehicles used by drivers to give rides on the Lyft platform, which are not primarily used to transport passengers, are thus required to meet a significantly higher standard than vehicles that are primarily used to transport passengers. For that reason alone, the mileage requirement appears arbitrary and unlikely to benefit public safety.

38. Although the Commission suggested that treating vehicles owned by drivers using the Lyft platform and call and demand vehicles differently is warranted by the fact that call and demand vehicles are in the care of transportation companies, Lyft is aware of no evidence

suggesting that transportation companies provide a greater level of maintenance than individuals. The contrary inference is more likely: because drivers using the Lyft platform primarily use their vehicles for their own personal use, they would be expected to maintain their vehicles in at least as good as condition as transportation companies, especially considering that vehicles used primarily for commercial service would be expected to log many more miles, and do so under city-driving conditions, than vehicles used primarily for personal use.

39. Similarly, the age requirement necessarily assumes that the same factors applicable to call and demand vehicles apply to personal vehicles that are used on the Lyft platform. But Lyft is aware of no evidence to that effect. As discussed above, it is more likely that individuals maintain their vehicles at least as well as transportation companies, and that individual vehicles are driven less than primarily commercial vehicles. Given the significant impact that this requirement would have on Lyft's ability to provide the very service approved in the ETA Application, the Commission should exercise caution before treating vehicles owned by drivers using the Lyft platform and call and demand vehicles as one in the same.

40. Even assuming that the Commission continues to have concerns about the age and mileage of the vehicles operated by drivers using the Lyft app, Lyft believes that the more prudent course of action is to first rely on the extensive regulations of the Commission that Lyft is in compliance with, and then assess over time whether those regulations are not stringent enough to satisfy the Commission's public safety goal. Lyft can then provide the Commission with data regarding any issues relating to vehicle safety, which can then be used to determine whether there would be any benefit to imposing additional conditions on Lyft. Under the current approach, the Commission risks stifling Lyft's development before it even begins. As Lyft explained in its September 29, 2014 Petition to Amend, if it is required to enforce the age/miles

requirement, it will significantly reduce the potential drivers available to operate on the Lyft platform. That reduction will in turn will undermine the fundamental premise of Lyft's innovative product, which strives to encourage as many drivers as possible to makes themselves available for potential passengers. Indeed, that approach is what distinguishes Lyft from cab companies.

41. In the interim, Lyft requests that the Commission suspend these requirements until Lyft and the Commission are able to assess whether there is any correlation between the age or mileage of a vehicle used by a driver and a lack of vehicle safety. Absent such a connection, Lyft submits that the current vehicle inspection requirements, with which drivers operating on the Lyft platform are required to comply, are more than sufficient to advance the Commission's public safety goal.

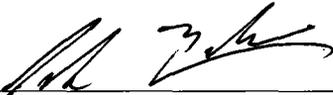
IV. CONCLUSION

WHEREFORE, Lyft, Inc. respectfully requests that this Honorable Commission:

- (1) reconsider the age-and-mileage condition and the notice-to-insurers condition;
- (2) waive the requirement that Lyft abide by those conditions while it continues to exercise emergency temporary authority in Allegheny County; and
- (3) amend its Order accordingly.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: October 27, 2014