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October 30, 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:

Enclosed for filing with the Pennsylvania Public Utility Commission is Lyft, Inc.'s Answer to the Bureau of Investigation and Enforcement's Motion to Strike the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question 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 read '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

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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).

VIA E-MAIL AND FIRST CLASS MAIL

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Adeolu A. Bakare
Counsel to Lyft, Inc.

Dated this 30th 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	:	

**ANSWER TO THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S MOTION
TO STRIKE THE PETITION OF LYFT, INC. FOR INTERLOCUTORY REVIEW AND
ANSWER TO A MATERIAL QUESTION**

Pursuant to Section 5.61(a)(1) of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Regulations, Lyft, Inc. (“Lyft” or “Respondent”) submits this Opposition to the Motion to Strike the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question filed by the Bureau of Investigation and Enforcement (“I&E”) in the above-captioned proceeding.

INTRODUCTION

1. The underlying facts in this matter are not complex and are, by and large, undisputed. Instead, the resolution of this matter will likely turn on how the current regulatory structure is applied to those facts. For example, from I&E’s perspective, the key unknown fact was the number of rides arranged in Pennsylvania using the Lyft app during the relevant periods. But that fact is no longer an unknown. I&E requested discovery on that question, and Lyft has provided the information without objection subject to an agreement on a protective order. I&E obviously had no concerns about the accuracy of the information provided by Lyft given that it amended its complaint based on that information. Indeed, on the basis of that information, I&E

now seeks what apparently would be the largest fine in the history of the Commission by several multiples.

2. But I&E is not satisfied. I&E seeks to force Lyft to comb through thousands of documents that are replete with highly sensitive and confidential passenger information simply so that I&E can “corroborate” what it believes it already knows. This overreach has created an “exceptional situation” and thus warrants the Commission’s attention. If Lyft is forced to produce documents reflecting “any and all” communications with passengers, and it is later determined that the order compelling Lyft to do so was in error, the harm to Lyft will be irreparable. To avoid that result, and to send a clear message to I&E that this type of abusive discovery practice will not be tolerated, the Commission should grant Lyft’s Petition and reverse the ALJs’ order compelling Lyft to produce the requested documents. The need for the Commission to clarify for I&E what are proper discovery practices is further demonstrated by the fact that I&E has informed Lyft that it intends to breach the parties’ agreement as to a protective order covering documents already produced by Lyft.

BACKGROUND

3. On June 5, 2014, I&E filed a complaint against Lyft (the “Complaint”). The Complaint alleged that Lyft brokered the transportation of persons in Pennsylvania without proper authority in violation of 66 Pa. C.S. § 3302.

4. I&E subsequently filed a Petition for Interim Emergency Relief that sought an order directing Lyft to cease and desist its operations in Pennsylvania. On July 24, 2014, the Commission found that I&E met the requirements for obtaining interim emergency relief. Purportedly to aid in the formation of a Final Order in this matter, a Secretarial Letter was issued on July 28, 2014, directing the parties to determine “[t]he number of transactions/rides provided

to passengers in Pennsylvania via connections made with drivers through Internet, mobile application, or digital software” during several time periods.¹

5. On August 8, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set I (“Set I”) to Lyft. Set I consisted of two requests. Set I-Request No. 1 requested that Lyft “identify the number of transactions and/or rides provided to persons between points within the Commonwealth of Pennsylvania via connections made with drivers through [Lyft]’s website on the Internet, [Lyft]’s mobile application or [Lyft]’s digital software” during various time periods. Set I-Request No. 2 sought “any and all invoices, receipt, e-mails, records and documents” sent by Lyft to individuals in connection with those trips.

6. On August 18, 2014, Lyft filed objections to Set I-Request No. 2. Lyft explained that the documents requested were not relevant, that requiring their production would impose on undue burden on Lyft, and that the documents included highly sensitive and confidential information. Lyft did not object to Set I-Request No. 1, and it has already produced documents responsive to that request.

7. With regard to Set I-Request No. 1, Lyft contacted I&E in early September 2014 to discuss entering into a protective order that would cover responsive documents. The parties proceeded to negotiate the terms of a protective order, and on September 9, 2014, through its counsel, I&E accepted and agreed to the terms of the protective order. In reliance on that agreement, Lyft produced documents responsive to Set I-Request No. 1.

8. On August 29, 2014, I&E filed an Amended Motion to Compel Lyft’s Response to Set I, which sought to compel a response to Set I-Request No. 2. I&E argued that the requested documents were relevant for two reasons. First, I&E argued that the documents were

¹ The Letter addressed two other points that, as I&E acknowledges, *see* Mot. to Compel Set I at 3 n.1, are not relevant here.

necessary to “corroborate Lyft’s response to I&E’s Interrogatory No. 1.” Mot. to Compel Set I ¶ 12. Second, I&E argued that the request was “necessary for I&E to properly evaluate the extent of Lyft’s transportation activities that occurred prior to the granting of its application for emergency temporary authority.” *Id.* ¶ 18. I&E further addressed that point, contending that it needed the documents to determine the number of days that Lyft operated prior to receiving temporary authority. *Id.* I&E failed to explain why it was unable to count the days from when Lyft starting operating to when it received temporary authority absent “any and all documents” associated with each and every trip.

9. I&E also attempted to address Lyft’s objection that responding to the request would be an undue burden. According to I&E, “[t]he supporting documentation requested in I&E’s Interrogatories is precisely the same information that the Commission routinely receives and examines from other entities that provide transportation for compensation.” *Id.* ¶ 14. I&E asserted that its request was no broader in scope than what cab companies are required to provide to the Commission, e.g., daily log sheets. *Id.*; *see also id.* ¶ 19 (“this very same information, if requested, is required to be provided by any common carrier under the Commission’s jurisdiction”).

10. Finally, as to Lyft’s confidentiality concerns, I&E proposed to Lyft that it could produce the documents “subject to a Protective Order that limits the availability and public disclosure of such information.” *Id.* ¶ 20.

11. On September 3, 2014, Lyft opposed that motion. Lyft explained that (i) given I&E’s stated purpose for Request No. 2, which was to determine the number of rides at issue, it was completely duplicative of Request No. 1; (ii) responding to the request would impose an undue burden on Lyft because of the high volume of documents it would have to review; and

(iii) the documents requested in no way resembled trip logs prepared by cab companies, e.g., trip logs do not include customer's credit card information, nor do they recount every single interaction the cab company had with the customer.

12. On October 3, 2014, the ALJs granted I&E's Motion to Compel with respect to Set I-Request No. 2 (the "October 3 Order"). Without explanation, the ALJs failed to address Lyft's argument that Request No. 2 was duplicative of Request No. 1, nor did they address the burden that Lyft would have to undertake to identify all potentially responsive documents or that the nature of the requested documents far exceeded what cab companies are required to make available to the Commission. Instead, the ALJs simply stated that (i) any confidentiality concerns could be addressed through a protective order and (ii) Lyft had failed to show that redacting responsive documents would be an undue burden.

13. Also on October 3, I&E propounded additional discovery requests ("Set II"). Those requests are relevant here because they are probative of I&E's conduct in this matter and whether Lyft can rely on representations made by I&E.

14. On October 10, 2014, Lyft filed a Petition for Interlocutory Review of the October 3 Order, and on that same date, I&E filed a motion to strike the Petition.

15. On October 20, 2014, as part of its effort to comply with the October 3 Order, Lyft requested I&E's confirmation that the protective order agreed to by the parties on September 9 would also cover documents produced in response to Set I-Request No. 2 as well as documents produced in response to Set II. In light of I&E's representation in its Motion to Compel Set I that all documents could be produced pursuant to a protective order, and the October 3 Order, which encouraged Lyft to seek a protective order, Lyft had no reason to believe that it would *not* be able to protect the confidentiality of its documents.

16. However, in a surprising turn of events, on October 28, 2014, I&E informed Lyft that not only was it refusing to enter into a protective order for documents produced in response to Set I-Request No. 2 and Set II, but that it was also no longer willing to honor the parties' September 9, 2014 agreement on a protective order.

ARGUMENT

17. In refusing to enter into a protective order or to honor its confidentiality agreements with Lyft, I&E has created precisely the sort of "exceptional situation" in which interlocutory review is necessary and permitted. I&E asserts that interlocutory review of the October 3 Order is not available to Lyft for various procedural reasons including a lack of certification by the presiding officer. Mot. to Strike ¶ 5 (citing 52 Pa. Code § 5.304(a)). The Commission can, however, consider an interlocutory appeal without certification in an "exceptional situation" or where "the ruling involves an important question of law or policy that should be resolved at this stage of the proceedings." *MCI WorldCom Communications, Inc. v. Verizon Pa. Inc.*, 2001 WL 36256566 (Penn. P.U.C. Nov. 9, 2001); *see also In Re Bell Atl.-Pennsylvania, Inc.*, 94 Pa. P.U.C. 375 (July 20, 2000) (permitting interlocutory review without certification by the presiding officer after finding there to be an "exceptional situation"). A ruling should be reviewed on an interlocutory basis where "such prejudice resulting from the error cannot be satisfactorily cured during the ordinary course of our review." *MCI WorldCom*, 2001 WL 36256566.

18. Here, Lyft's petition should be heard because Lyft will suffer incurable prejudice from the ALJ's erroneous decision granting I&E's motion to compel, both from the burden of collecting and producing the documents as well as the loss of confidentiality. The ALJ's decision was predicated in part on the assumption that the contested disclosures "could be provided pursuant to a protective order," and that "it is well within Lyft's abilities to negotiate a

confidentiality agreement for the purposes of discovery and seek a protective order for the purposes of the evidentiary hearing on this complaint.” October 3, 2014 Order at 3. Because I&E will not enter into or abide by such agreements, Lyft’s discovery responses run an immediate risk of disclosure to Lyft’s waiting competitors, the harm from which cannot be cured in the ordinary course of this case. The Commission should therefore consider and grant Lyft’s petition.

19. As to the Petition, it should be granted for three reasons.

20. First, the ALJs erred in not quashing Request No. 2 on relevance grounds. As explained above, I&E argued that the requested documents are relevant because I&E will use them to confirm the accuracy of Lyft’s response to Request No. 1 and because they are necessary for I&E to calculate the appropriate per day penalty. I&E’s own arguments demonstrate why Request No. 2 does not seek relevant documents. Through Lyft’s response to Request No. 1, I&E is already fully aware of the number of trips that were arranged through the Lyft app in Pennsylvania. In fact, I&E amended its complaint in this matter based on that information, which demonstrates the disingenuous nature of I&E’s claim that it needs to “corroborate” Lyft’s response. If I&E believes that Lyft has provided it with false information, then it should say so. Absent such an allegation, I&E is not entitled to harass Lyft with duplicative requests.

21. Second, the ALJs erred in not quashing Request No. 2 because of the tremendous burden that Lyft would have to undertake to respond. As I&E and the Commission are aware, the number of rides at issue is substantial. Assuming that Lyft has one-to-five documents per ride, the number of responsive documents would quickly reach the hundreds of thousands. Given I&E’s admission that it is seeking to have Lyft bear that burden solely to “corroborate” its

response to Request No. 1, the Commission should find that the effort would be unduly burdensome.

22. I&E attempts to minimize that burden by repeatedly asserting that Request No. 2 seeks nothing more than what every cab company is required to make available to the Commission. But, again, I&E's own statements belie that argument. According to I&E, cab companies and the like are required to maintain daily log sheets and trip sheets that include information such as "the places of origin and destination, the name of the driver and the meter reading at the beginning and end of each trip." Mot. to Compel Set I ¶ 14. But Request No. 2 does not seek information sufficient to show simply "the places of origin and destination" of each trip. It seeks *every single document* sent to individuals relating to each and every ride. Based on I&E's own description, cab companies are under no obligation to disclose every single document relating to every trip, including all communications regarding arranging the trip and all communications regarding past trips. The same should be true for Lyft.

23. Third, again, Lyft's concerns about confidentiality have proven to be warranted. I&E's decision to breach its agreement to treat already produced documents as confidential, and its refusal to treat any subsequently produced documents as confidential, demonstrate that the only acceptable result is for the Commission to find that Lyft should not be compelled to respond to Request No. 2. The thrust of the October 3 Order was that Lyft's confidentiality concerns were unwarranted because it could simply enter into a protective order with I&E. While Lyft engaged in good faith efforts to accomplish that goal, I&E is now refusing to consider a protective order. The Commission should address that refusal.

WHEREFORE, Lyft, Inc. respectfully requests that the Pennsylvania Public Utility Commission consider this Answer to the Amended Complaint filed by the Bureau of Investigation and Enforcement.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Dated: October 30, 2014

