BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Lyft, Inc.	: Docket No. A-2014-2415045
	: Docket No. A-2014-2415047

REPLY OF THE INSURANCE FEDERATION OF PENNSYLVANIA TO THE EXCEPTIONS OF LYFT, INC.

Samuel R. Marshall (PA ID No. 33619)
Insurance Federation of Pennsylvania, Inc.
17th Floor
1600 Market Street
Philadelphia, PA 19103

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INTRODUCTION

Lyft, Inc. ("Lyft") has filed Exceptions to two Decisions filed by the Administrative Law Judges ("ALJs") on October 9, 2014 recommending that its Applications for authority to operate in Allegheny County and statewide be denied. Lyft seeks a reversal of the ALJs' Decisions and requests Orders approving both Applications – whatever they may now be.

The Insurance Federation files this Reply, recommending the Commission adopt the ALJs' Decisions and order Lyft to submit revised Applications addressing the deficiencies outlined in those Decisions. As the Federation's interest is with Lyft's proposed insurance and its ramifications, this Reply will focus on Lyft's insurance-related Exceptions. Those are Exceptions 1 through 3 in Lyft's Allegheny County filing, and Exceptions 2 through 4 in its statewide filing; they are verbatim, so the Federation files this Reply to both, consistent with its Main Brief covering both filings. As the insurance issues Lyft raises were also addressed in the Federation's Main Brief (and in the ALJs' Decisions), the Federation incorporates that brief here.

SUMMARY OF REPLY

Lyft argues that the ALJs were too curious, too concerned and too thorough in their review of the insurance it provides (or doesn't provide) in its Applications.

That is ridiculous. The ALJs' – and the Commission's – focus on insurance is to assure public safety. Lyft not only should have been prepared for a thorough review of whether it is providing readily identifiable and accessible insurance to assure the public's safety; it also should have affirmatively outlined an insurance program doing this in its Applications and at the hearing.

It didn't do that, despite knowing the questions and concerns it would face – all of which were raised in the Commission's July 24, 2014 Emergency Temporary Authority ("ETA") Order, the Protests filed by the Insurance Federation and the development of legislation in other states and localities. Having spent the Application process hiding behind evasive answers and semantic games, Lyft now wants the Commission to reward it by approving Applications that will create significant insurance uncertainties and gaps for its drivers, passengers and other third parties.

There is an "Alice in Wonderland" meets "Catch 22" aspect to Lyft's Exceptions. The errors it cites in the ALJs' Decisions aren't so much errors – certainly not if the standard is public protection – as Lyft's own twisted logic and tortured interpretations. The only error is that of Lyft. It has refused to thoroughly discuss or fully disclose its insurance program with everybody: The Commission, the ALJs, insurers and most important, its drivers, passengers and public. That error can be readily rectified if Lyft decides to be forthcoming. The ALJs' Decisions recommend that and should be affirmed.

REPLY

1. The ALJs correctly affirmed that Lyft should provide primary coverage during all three stages - when a driver is "on app," "on match" and "on ride."

> "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.... 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 that time." Lyft Exceptions at p. 7 (Allegheny County) and p. 11 (statewide)

Lyft wants the Commission to reverse the ALJs on a key requirement – that it provide primary coverage during Period 1, consistent with the Commission's ETA Order and the need to ensure meaningful insurance coverage during this time. And its main argument is that Commission staff said the Commission meant just the opposite in heretofore undisclosed "compliance meetings"? It never mentioned these meetings in the underlying proceeds or in its Main Brief, but now they are its cornerstone? Please.

Who knows whether these meetings happened, who attended, what was said or determined, and with what meaning. We question the propriety of Lyft engaging in such meetings and only now seeking to enter into these deliberations alleged Commission staff interpretations, without anybody having the opportunity to question Commission staff or have a more fulsome discussion.

Sadly, this is typical of Lyft's approach in these Applications – evasive and disingenuous throughout, obscuring the issues of its proposed insurance program throughout.

The record from the administrative hearing was overwhelming with respect to Period 1: First, Lyft's business plan is to get its drivers "on the road" more often, and during times they otherwise would not be (those of "peak demands," as with airports on a Sunday night, "last call" on a Saturday night, inclement weather, etc.), so they can be available for matches. That is hardly the same as being "simply an individual in your car going about your daily business," where finding a match is serendipity. Insurers uniformly regard a driver "on app" as presenting a different risk exposure than a driver going about his daily business. So does Lyft, and it acknowledges its own responsibility during this stage – hence, its offer to at least provide contingent coverage during this stage, which it presumably would not do if it genuinely thought the driver was going about his or her daily business.

Second, insurers will not provide coverage under personal auto policies to drivers during this stage; that is what livery exclusions exclude. No amount of wishful thinking from Lyft can make it otherwise. This is not an "off chance" or "just in case" a driver's personal auto insurer declines coverage. The record from the administrative hearing was conclusive that a Lyft driver will have no coverage other than that provided by Lyft during this period, unless the driver had a special endorsement from his insurer, an endorsement not yet available in the personal auto market.

Lyft nonetheless says it "provided ample record evidence showing that primary insurance [from it] is not necessary or appropriate for Period 1." The record is just the opposite. Its proposed contingent coverage is hardly meaningful or accessible coverage, since it entails

an injured claimant first identifying and then pursuing another avenue of insurance – an avenue that will result in lost time, not recovery or expeditious resolution for a claimant. All contingent coverage means is consumer confusion and claims delay. And while Lyft now suggests otherwise, it was uncertain – maybe deliberately so – when its contingent coverage would kick in. It was vague on whether it could contest a driver's insurer saying no; and since all personal auto insurers will say no, what is the point of calling this contingent coverage anyway?

The ALJs took the time to examine this "on app" period. They showed considerably more curiosity, concern and thoroughness on behalf of the public than Lyft has. They looked into livery exclusions and the lack of personal auto insurance coverage during this stage, and they recognized the problems the public would face in accidents during this stage (not just the drivers, but other third parties under Lyft's contingent coverage) – both in identifying the proper insurer with whom to file a claim, and figuring out how to wade through a determination of whether contingent coverage would apply.

The ALJs did their job to protect the public by rejecting this watered-down insurance:

> "One of the most compelling factors which supports the conclusion that this application should be denied is that the Applicant failed to demonstrate that the insurance policy which it holds in connection with the proposed service will, with any degree of certainty, provide continuous coverage of the vehicles used in the operation. Instead, the evidence shows that there are significant uncertainties about the quality of the Applicant's proposed policy which at the very least, would result in delays in meeting any claims made by a passenger or a driver. Further, it is unclear that either drivers or passengers have sufficient information to make a knowing judgment about their coverage for any injuries which may result or their exposure to the claims of others." ALJs' Decision at pp. 21-22 (Allegheny County), p. 22 (statewide).

Lyft wants the Commission to do the opposite. It wants the Commission to side with semantics, saying the "on app" stage doesn't involve actual transportation (forget that "on app" does involve being available for transportation, which is the key to any livery service or exclusion) and that providing insurance can be satisfied by it being either primary or contingent (forget that to a claimant, those are dramatically different levels of coverage). And it wants to make this sound as if this was blessed by Commission staff as what the Commission really meant in its July 24 ETA Order.

Enough is enough. The ALJs recognized the obvious: Certainty of insurance is as important when a driver is "on app" as at any other time, and it can only be achieved by Lyft providing primary coverage during this stage. That is what the public expects and deserves.

2. The ALJs correctly focused on the inadequacy of Lyft's communications with its drivers concerning insurance issues.

The record from the administrative hearing was clear: Whatever else Lyft intends to tell its drivers, it doesn't intend to tell them much about the insurance coverage it provides, or how to access it, and it tells them veritably nothing about the personal auto insurance coverage concerns a driver should examine.

Lyft criticizes the ALJs for finding that as a flaw in its Applications. Again, this amounts to Lyft criticizing the ALJs for being more concerned about Lyft's drivers and

passengers, and more thorough in addressing their insurance issues, than Lyft is. Lyft should be embarrassed: For an outfit that refers to its drivers as its partners, it is remarkably unconcerned with the personal auto insurance issues those "partners" will face – including termination and surcharges, and possibly problems if they have car leases or car loans.

Instead, Lyft is almost proud of its lack of disclosure to its drivers, saying it doesn't want to "interfere in the contractual relationship between a driver and a personal auto insurer" and that such communications "may lead to confusion for the affected driver." It also says this isn't the Commission's business.

Lyft is offering a twisted and tortured interpretation of the record from the administrative hearing. The reality is this: Lyft doesn't want to educate its drivers about the limits of the insurance coverage it provides them or about the personal auto insurance problems they may have by virtue of becoming Lyft drivers, even though it knows those limits and problems and knows its drivers have little expertise with the insurance ramifications of becoming commercial drivers in personal cars. And it doesn't want to advise its drivers to check with their insurers.

Lyft never explained why it doesn't want to do this. This isn't interfering in a driver's relation with its insurer or interpreting a driver's policy. It is informing its drivers of possible issues and the need for them to take responsibility for checking their own coverage and possible ramifications. Those disclosures are hardly unreasonable or

unfounded – if anything, they are minimal and benign, certainly compared with disclosures required of other regulated industries (as with insurance).

Related to this is the lack of instructions or communications Lyft provides its drivers (and passengers) in the event of an accident or claim. Again, the ALJs were more interested in this than Lyft: The record from the administrative hearing was devoid of any established program for handling claims or educating drivers on how to do so. Much of that goes to questions about Lyft's proposed insurer, James River: There is nothing wrong with being a surplus lines insurer, but red flags go up when any insurer doesn't want to know who it is insuring and may not have its own claims system.

Lyft's approach has been that it wants to tell the Commission about its insurance – it just doesn't want to tell its drivers, passengers or claimants, and it doesn't want to hear any questions. In its Exceptions, it wants to rewrite the record, saying it was clear on providing its drivers with digital insurance cards and how to respond to authorities in an accident – that the ALJs somehow overlooked its thoroughness.

The ALJs saw through this, recognizing that Lyft's insurance is only as meaningful as it is explained to those counting on it, and that Lyft proposes minimal if any explanation. This is at the core of the public protection insurance is meant to provide: Drivers, passengers and claimants should be knowledgeable about and prepared for the insurance issues they will face. These aren't some obscure, attenuated issues. They are well-known to insurance professionals and to Lyft, but might not be to its prospective drivers,

passengers or claimants. That is why the ALJs want them addressed and disclosed; the Commission should, too.

Most telling, Lyft never explains why providing a clear and concise information program to its drivers and passengers about its insurance coverage and insurance issues is unreasonable or onerous. If its insurance were as good as it professes, and if its insurance program as comprehensive as it contends, it should welcome the chance to be more forthcoming: All it amounts to is full transparency, not a labor-intensive process.

The disclosures, communications and programs sought by the ALJs are easily done. They may be embarrassing for Lyft because they reveal gaping holes and callous disregard for its drivers and passengers. That was the ALJs' point in assuring public protection. The Commission should emphasize this.

3. The ALJs correctly noted the differences between Lyft's insurance coverage and its contracts with its drivers.

Lyft contends it can now brush away the contradictions between its professed insurance coverage and its disclaimers and exclusions in its contracts and agreements with drivers and passengers. It says it never meant those disclaimers and exclusions to alter its insurance coverage, or at least alter whatever insurance is required by Pennsylvania law and regulations – and it is even willing to put that in writing.

That will do little to clarify things for a Lyft driver or passenger, who likely isn't aware of those insurance requirements. Just the opposite, this amounts to Lyft proposing to answer its own ambiguities with more of the same. It never explains how to make any of this clear to its drivers or passengers, who hardly need more fine print to explain the existing fine print. And even now, it never proposes to explain to its drivers or passengers just what its "insurance obligations" are, just that it will meet them.

CONCLUSION

Throughout much of this proceeding, and in related proceedings and testimony before the Commission and legislative bodies, the Insurance Federation has endorsed a "trust but verify" stance for the insurance program Lyft proposes.

Lyft, however, hasn't earned the trust, much less allowed for verification. It was evasive in the administrative hearings, refusing to answer discovery requests until the day of the hearing, not documenting its professed insurance program, and not bringing a witness involved with that program. It has been evasive about complying with the Commission's ETA Order, both with notice to its drivers and apparently with providing primary coverage during Stage 1.

Its Exceptions are worse: They rely not just on a parsing of the record and a selective portrayal of it and the ALJs' Decisions, but on averments never before mentioned – ranging from alleged meetings with Commission staff on the type of coverage required in Stage 1 to an offer to reconcile its contracts with drivers and passengers with its professed insurance (albeit a "reconciliation" that only furthers the problem).

Lyft's favorite argument for approval of its Applications despite the myriad of problems and uncertainties and its own misconduct is its popularity. It ignores the responsibility that comes with being a market innovator: Lyft's popularity is not a reason to overlook the inadequacies of its Applications; it is a reason to be frustrated with Lyft. The ALJs have not suggested anything unusual, unprecedented or daunting, and everything they have recommended is consistent with a well-run operation that protects the public in an accountable and ongoing way. Lyft's continued resistance, and the tactics it employs, is as inexplicable as it is arrogant and inexcusable.

Lyft's acknowledged popularity should mean more, not less, protection: Whatever it does or doesn't provide with respect to insurance will impact a broad swath of the public. The ALJs recognized the need to answer the questions about Lyft's insurance from the outset. After a thorough review, they reached a clear Decision:

> "The evidence demonstrates that the Applicant has failed to propose adequate insurance, education and training for Applicant's drivers, its passengers and the general public, and it leaves unanswered several crucial insurance-related issues. As such, the application fails to protect the public and must be denied, on this basis alone." ALJs' Decisions on Allegheny County and statewide, both at p. 26.

Lyft's objections – this isn't the Commission's concern; the Commission meant something different according to its staff; and Lyft may do something along these lines at some point – have grown as tiresome as they are evasive.

The ALJs' concerns were on target – protect the public – and its recommendations are thorough, meaningful and practical. The Commission should affirm their Decisions and instruct Lyft to file new Applications providing the public protections set forth in those Decisions.

Respectfully submitted,

Samuel R. Marshall (PA ID No. 33619)

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17th Floor
1600 Market Street
Philadelphia, PA 19103

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail or e-mail

Adeolu A. Bakare, Esq.
McNees, Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17108

David William Donley, Esq.
JB Taxi LLC t/a County Taxi Cab
3361 Stafford Street
Pittsburgh, PA 15204

Michael S. Henry, Esq.
Michael S. Henry LLC
Concord Limousine, Black Tie Limousine,
Executive Transportation Inc
2336 S. Broad Street
Philadelphia, PA 19145

Lloyd R. Persun, Esq.
Persun and Heim, P.C.
MTR TRANS INC & BILLTOWN CAB
P.O. Box 659
Mechanicsburg, PA 17055-0659

Dennis G. Weldon, Jr., Esq.
Bryan L. Heulitt Jr., Esq.
Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106

Mary D. Long
Jeffrey A. Watson
Administrative Law Judges
Pennsylvania Public Utility Commission
301 5th Avenue
Suite 220
Pittsburgh, PA 15222

Samuel R. Marshall
Insurance Federation of Pennsylvania

Dated this 3rd day of November, 2014, in Philadelphia, Pennsylvania