



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 31, 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. (Experimental Service in Allegheny County); A-2014-2415045
Petition of Kim Lyons and PG Publishing, Inc d/b/a The Pittsburgh Post-Gazette for an
Interim Emergency Order; P-2014-2442001
Application of Lyft, Inc. (Experimental Service in Pennsylvania); A-2014-2415047**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is Lyft, Inc.'s Petition For Partial Stay or Supersedeas of the Proceeding in the above-referenced proceeding.

Please note that **Lyft hereby requests emergency and expedited consideration of the Petition as necessary to grant the requested relief before taking any action to unseal the record pursuant to the November 3 effective date of the Order on Proprietary Information Claims entered on October 23, 2014.**

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.

Enclosure

- 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)
- Chairman Robert F. Powelson (via e-mail and Hand Delivery)
- Vice Chairman John F. Coleman Jr. (via e-mail and Hand Delivery)
- Commissioner James H. Cawley (via e-mail and Hand Delivery)
- Commissioner Pamela A. Witmer (via e-mail and Hand Delivery)
- Commissioner Gladys M. Brown (via e-mail and Hand Delivery)
- Bohdan R. Pankiw, Esq., Chief Counsel (via e-mail and Hand Delivery)
- John Herzog, Esq. (via e-mail and Hand Delivery)
- 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

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

Michael S Henry, Esq.
Michael S. Henry LLC
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@ix.netcom.com

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

Samuel R. Marshall
CEO and President
Insurance Federation of Pennsylvania
1600 Market Street, Suite 1720
Philadelphia, PA 19103
smarshall@ifpenn.org
dwatson@ifpenn.org

Ellis W. Kunka, Esq.
Frederick N. Frank, Esq.
Frank, Gale, Bails, Murcko & Pocrass, P.C.
707 Grant Street, Suite 3300
Pittsburgh, PA 15219
kunka@fbmgg.com
frank@fbmgg.com

VIA FIRST-CLASS MAIL

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



Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 31st day of October, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County Between Points in Allegheny County, PA

Docket No. A-2014-2415045

Petition of Kim Lyons and PG Publishing, Inc d/b/a The Pittsburgh Post-Gazette for an Interim Emergency Order

Docket No. P-2014-2442001

Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania

Docket No. A-2014-2415047

PETITION FOR A PARTIAL STAY OR SUPERSEDEAS OF THE PROCEEDINGS

Pursuant to Pa. R.A.P. 1781(a) and 52 Pa. Code § 5.572, Lyft, Inc. (“Lyft” or “Company”) respectfully requests an immediate stay or supersedeas of Paragraphs 3–5 of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Commission’s Order Regarding Proprietary Information Claims dated October 23, 2014 (“October 23 Order”). For reasons explained in this Petition and in Lyft’s contemporaneously filed Petition for Reconsideration of the October 23 Order, such a stay is necessary to prevent irreparable harm to Lyft.

INTRODUCTION

1. Confronting an issue of first impression, on October 23, 2014, the Commission broke new ground and became the first body to rule that Lyft’s trip data does not constitute propriety information and ordered that the record in this case be unsealed (the “October 23

Order”). The October 23 Order is set to become effective ten days after the decision, November 3, 2014. No later than that date, Lyft will petition the Commission to reconsider its decision, and, if that effort is not successful, Lyft fully intends to pursue all available remedies to avoid a significant and unjustified invasion of its proprietary information. As the Commission has already acknowledged, it is impossible to unring the bell once that data is published to Lyft’s competitors—Lyft’s harm would be immediate and irreparable. In light of that unavoidable reality, and the likelihood that this issue will recur with respect to other Transportation Network Companies (“TNCs”), Lyft respectfully requests a partial stay of the October 23 Order, so that this important issue can be fully considered before it is resolved for the first time.

ARGUMENT

2. A stay of proceedings is appropriate and necessary where a party demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4) issuance of the stay will not adversely affect the public interest. *See Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983). Further, the Commission has observed that:

[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our order will have pending appeal.

Pennsylvania Public Utility Commission v. Makovsky Brothers, Inc., 53 Pa. P.U.C. 510, 511 (1979). This language could find no better expression than here.

3. The effect of the requested stay order in this instance is dispositive to the dispute at issue. That is, if the Commission does not stay the portions of its October 23 Order requiring disclosure of trip data while Lyft seeks further review of that decision, then the trip data will be

disclosed immediately, depriving Lyft of any meaningful access to judicial process. Lyft's efforts at review will be rendered pointless *before their merits are even considered*. This alone justifies the stay.

4. The same result follows from the four factors considered for grants of stays.

5. *First*, Lyft is likely to succeed on the merits. As explained in its Petition for Reconsideration, the trip data at issue is extremely valuable to Lyft's competitors. That fact is, in effect, undisputed given that one of Lyft's main competitors (Uber) is refusing to provide its trip data to the Commission—rather than even run the risk of disclosure—because of how valuable it is. *See Application of Raiser-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval of Operate an Experimental Ride-Sharing Network Service Between Points Allegheny, Pennsylvania*, Reply Exceptions, Docket No. A-2014-2416127 (October 10, 2014), p. 8. Where the two main competitors in an emerging market both agree that keeping this information confidential is critical, and where those entities are experts in what makes the TNC model work, the Commission should give that analysis great weight and resist the urge to second-guess the value of the data based on conjecture and speculation.

6. In addition, the Commission minimized the impact of disclosure by asserting that Lyft would not have to disclose the number of rides it facilitated “in a particular market.” This is incorrect. Lyft *would* have to disclose the number of rides in a particular market—Allegheny County, Pennsylvania—if the trip data were released. October 23 Order at 18 (“[The data at issue] is simply a compilation of the number of trips Lyft provided in Allegheny County prior to Lyft being authorized by the Commission to operate.”). And that data has value far beyond Pittsburgh. The decision to enter a new market is significant. It requires a tremendous

expenditure of resources and great risk. Entry into a new market by one competitor is closely watched by other competitors so that they can assess the effectiveness of marketing and look for signs of economic success or failure. For TNCs, early trip data is the key barometer of those efforts. Trip data in one market will impact how a TNC introduces its product to the next similarly-sized market, and the next, and the next. If Lyft's competitors discover its trip data, even on a city scale, it will shed important light on Lyft's success, including potential revenue generation, and it will harm Lyft's economic interests. Those factors weigh heavily in support of keeping the data confidential, and Lyft is confident it will ultimately prevail on the merits. At the very least, it is difficult to conclude that Lyft is *unlikely* to succeed on the merits where there is absolutely no precedent on this issue.

7. *Second*, an irreparable injury is guaranteed if Lyft's trip data is disclosed because it can never be clawed back from Lyft's waiting competitors. Once the Commission releases the trip data, Lyft immediately loses all value of any appeal of the October 23 Order, no matter how meritorious its claims may be. *See* October 23 Order at 9 ("It is axiomatic that once proprietary information is disclosed, it cannot be effectively 'undisclosed.' This would, in the Commission's judgment, be injurious to the public."). As courts of this Commonwealth have noted, "Article V, Section 9 of the Pennsylvania Constitution guarantees the right to appeal from agency adjudications and 'was intended to grant access to courts for the review of agency adjudications.'" *Mercury Trucking, Inc. v. Pennsylvania Public Utilities Commission*, 618 Pa. 175, 55 A.3d 1056, 1074 (2013). Without a stay, Lyft will effectively lose this right of access.

8. *Third*, while denial of a stay would irreparably harm Lyft, granting of a stay would not substantially harm other interested parties. It would simply extend the status quo. The Commission has already found that there is no *immediate* need for disclosure to various

parties including the Pittsburgh Post-Gazette, and that remains the case. *See* October 23 Order at 9. The only interested parties who will be harmed by a stay in this instance are Lyft's competitors, which is the point.

9. *Fourth*, the stay poses no risk of harm to the public interest. Quite the opposite, the stay would be in the public interest as reflected in the Pennsylvania Constitution's guarantee of a right to appeal. That is, whatever public interest there might be in access to Lyft's proprietary information, it is outweighed by the public interest in ensuring that all parties have access to available legal process before irreparable harm is done.

CONCLUSION

WHEREFORE, Lyft, Inc. respectfully requests that this Honorable Commission grant the Petition for Partial Stay or Supersedeas and Order an immediate stay of Ordering Paragraph Nos. 3-5 to the Order Regarding Proprietary Information Claims entered on October 23, 2014.

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

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