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November 3, 2014

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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., 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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Lyft, Inc.'s Petition for Reconsideration of Order Regarding Proprietary Information Claims Dated October 23, 2014, in the above-captioned proceeding. The filing was initially submitted via hand delivery under Docket No. C-2014-2422713. This filing corrects the docket number.

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.

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)
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 3rd day of November, 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

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Docket No. A-2014-2415047

**PETITION FOR RECONSIDERATION OF ORDER REGARDING
PROPRIETARY INFORMATION CLAIMS DATED OCTOBER 23, 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. ("Lyft" or the "Company") files this Petition for Partial Reconsideration of the Order Regarding Proprietary Information Claims dated October 23, 2014.

INTRODUCTION

1. The Commission should reconsider its decision to share Lyft's trip with its competitors for two main reasons.

2. First, the Commission did not address the impact of disclosure at *this* time of *this* specific data. A key factor in the analysis of whether Lyft's trip data is proprietary is the value of the data. To properly assess the value of the trip data, however, it must be viewed in the correct context. While disclosure of aggregate number of trips may have little meaning to cab

companies, whose industry is present in nearly every city and town in the country and has been for decades, that does not *ipso facto* mean the data has the same value to all other entities, as the Commission appears to have initially concluded. The value of Lyft's trip data must be assessed in the context of a new industry where there are a very small number of competitors who are, at this very moment, engaging in a fierce battle to claim market share in mid-sized cities, like Pittsburgh. And the most important period of time in this competition for mid-sized cities is during the initial roll out. That is when Transportation Network Companies ("TNCs") assess the results of their efforts and determine next steps—for example, a TNC may increase or decrease its allocation of resources to a certain market based on the initial roll out, and that same information will help determine where the TNC expands next. If one TNC were to learn that a competitor's roll out was not as successful as expected, that competitor may quickly pour resources into that market in an attempt to corner it. Conversely, a highly successful roll out could cause a competitor to pull back resources from that market and redeploy them to other areas. In this burgeoning industry, those decisions are critical and there is little room for error. That is why *all* TNCs treat their trip data as highly confidential and proprietary.

3. Second, the Commission has not yet addressed the impact of its decision to force one TNC in Pennsylvania to disclose its trip data, while leaving its main competitor free to keep its data confidential. Whether trip data is proprietary to a TNC, in the context of an initial roll out in a mid-sized city, is an issue of first impression for this Commission (and a question that has not been addressed by any other body to Lyft's knowledge).¹ Given the circumstances, it strikes Lyft as fundamentally unfair that the Commission would unilaterally enforce its decision, especially where other TNCs will likely urge the Commission to reconsider its position. Even if

¹ No other state entity has compelled Lyft to disclose its trip data.

the Commission ultimately concludes that the trip data is not proprietary, then, at the very least, that approach should be applied equally and fairly. Otherwise, Lyft's competitors, including a certain competitor who has flatly refused to provide its trip data to the Commission, will be free to compare Lyft's initial results to theirs based on asymmetrical information.

4. For those reasons, Lyft respectfully requests that the Commission reconsider its decision in its October 23, 2014 Order ("October 23 Order") to allow publication of Lyft's trip data.

BACKGROUND

5. On July 31, 2014, Lyft was directed to provide information regarding rides offered in Pennsylvania in conjunction with its mobile software application or "platform."

6. On August 29, 2014, Lyft filed a Petition for Protective Order seeking to protect certain trip data and Lyft's insurance policies. On September 2, 2014, Lyft's Petition was granted in part, but Lyft's request to protect its aggregate trip data from disclosure was denied. However, on September 10, 2014, a temporary protective order was entered, protecting the trip data from disclosure until Lyft could seek relief from the Commission.

7. On October 23, 2014, the Commission held that Lyft's trip data was not proprietary, which effectively ordered the information disclosed to the public and Lyft's competitors. Lyft now seeks reconsideration of that decision.

STANDARD OF REVIEW

8. 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). Parties submitting petitions for reconsideration "may properly raise matters designed to convince" the Commission that it should amend an order. *Application of Consolidated Rail Corp., et. al.*, 2012 WL 3042071 (Pa. P.U.C. 2012). Such matters include "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).

ARGUMENT

9. The Commission’s regulations identify five factors meant to help guide a determination of whether information should be protected as proprietary. *See* 52 Pa. Code § 5.365(a)(1)–(5). These include “(1) The extent to which the disclosure would cause unfair economic or competitive damage, (2) The extent to which the information is known by others and used in similar activities, (3) The worth or value of the information to the party and to the party's competitors, (4) The degree of difficulty and cost of developing the information, [and] (5) Other statutes or regulations dealing specifically with disclosure of the information.” *Id.* Although the Commission considered those factors in the October 23 Order, it appears to have overlooked or not fully considered numerous critical issues affecting those factors.

10. First, the Commission wrongly “reject[ed] Lyft’s argument that disclosure would cause ‘unfair economic and competitive damage.’” October 23 Order at 17. Its conclusion was based on the assertion that the data did not involve “the number of rides *in a particular market* or the concentration of pick-ups and drop-offs in specific segments of that market.” *Id.* (emphasis added). This was incorrect. The data *did* involve “the number of rides in a particular market,” and the October 23 Order itself shows this, noting that the disputed data “is simply a compilation of the number of trips Lyft provided *in Allegheny County*.” October 23 Order at 18 (emphasis added). This error alone justifies reconsideration.

11. Beyond this, Lyft respectfully urges the Commission to consider the issue more broadly. While Lyft understands the Commission’s initial impulse to view aggregate trip data as having no special significance, it is important for the Commission to avoid making that assessment in a vacuum, but instead in the context of the fiercely competitive emerging market

in which Lyft operates. Properly viewed in that context, the disclosure at issue is not the same as capturing a snapshot of the number of trips that an established cab company provides over a six-month period in a fifty-year old industry. The issue is about gaining key insight into a start-up company's roll out of a product in a new market, where the same process is about to play out in dozens of comparable markets, against the same competitors. Lyft's trip data, if disclosed, will be picked up and taken on a trip across the country by Lyft's competitors, who will use it to harm Lyft in many places, not just Pennsylvania.

12. Second, the Commission did not dispute that Lyft's trip data information is not known by others, nor is it used in similar activities. *See* October 23 Order at 17–18. This factor therefore must have weighed against disclosure then and continues to do so now.

13. Third, the Commission found that Lyft's trip data was “not of significant value to Lyft's competitors sufficient to warrant non-disclosure.” *Id.* The Commission reached that conclusion because the trip data is “not a trade secret or operational methodology.” *Id.* at 18. Furthermore, because the data does not involve “sales patterns,” the Commission concluded that it would be impossible for a competitor of Lyft to use the trip data to determine Lyft's market share or to assess the success of its entry into a market the size of Pittsburgh.

14. Lyft's main competitor, Uber, appears to see things differently. Uber is also seeking authorization to operate in Pennsylvania. But Uber is so keen to protect *its* trip data from Lyft that Uber has refused to comply with the Commission's directive that the data be produced. *See* Exceptions of Raiser PA LLC to Recommended Decision at 8, Docket No. A-2014-2416127 (Oct. 10, 2014). Uber also recognizes the monumental value this information would have to its competitors, and it is in a position to know. *Unlike* Uber, Lyft has complied with the Commission's request for the trip data and has demonstrated its commitment to working

with the Commission to ensure that it has all of the information necessary to fully consider Lyft's application for experimental. It would be fundamentally unfair for Lyft to be punished for its cooperation—through the disclosure of this confidential data—while Uber benefits from its lack of cooperation.

15. The fact that the two main competitors in a burgeoning market are fighting vigorously to prevent the other (and others) from obtaining certain information is all-but dispositive evidence that the information is valuable. Commissioner Pamela Witmer was right when she noted that publication of the trip data for the first eight months of Lyft's operations in Allegheny County would be eagerly reviewed by Lyft's competitors and used to evaluate their resource allocation for similar-sized cities as both TNCs continue expanding into new markets. *See* Dissenting Statement of Pamela Witmer at 2 (Oct. 23, 2014). The information is therefore akin to disaggregated revenue information in cases involving Incumbent Local Exchange Carriers, which the Commission has protected from disclosure because of its value for competitors' market strategy. *See In Re Windstream Pennsylvania, Inc.*, slip op., 2007 WL 1928636, at *2 (June 25, 2007).

16. Thus, three of the five factors set forth in 52 Pa. Code § 5.365(a) weigh heavily in support of a finding that Lyft's trip data is proprietary, and the remaining two factors—difficulty in developing the information and other statutes or regulations addressing disclosure—are not relevant.

17. Finally, the Commission also considered public interest in disclosure. The Commission concluded without explanation that the trip data was “of obvious concern to the public and would only be protected from disclosure for extraordinary reasons.” October 23 Order at 17. Not so. While the specific number of trips arranged using the Lyft app is of

obvious interest to Lyft's *competitors*, it is unclear, respectfully, why it is of any public interest at all. While Lyft acknowledges that the public has an interest in seeing that the Commission's regulations are enforced, it is unclear why knowing the specific number of trips arranged using the Lyft app is germane to those interests. The public is fully aware of I&E's allegations against Lyft. And, if I&E is successful in proving any violations, the public will be fully aware of whatever resolution follows (to the extent I&E concludes the resolution should be publicly available).

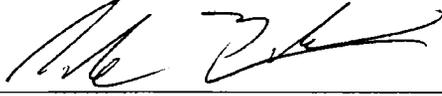
CONCLUSION

18. Lyft fully appreciates that the Commission has deemed its trip data relevant to the regulatory process, which is precisely why the information was disclosed. Lyft also acknowledges that, for other transportation carriers or public utilities, such information may not raise competitive concerns. However, the specific circumstances of the nascent TNC market must be considered independently.

19. For those reasons, Lyft requests that the Commission grant its Petition for Reconsideration, and reverse its decision finding that Lyft's aggregate trip data is not proprietary.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: November 3, 2014

**BEFORE THE
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Docket No. A-2014-2415047

**VERIFIED STATEMENT IN SUPPORT OF PETITION
FOR RECONSIDERATION OF ORDER REGARDING PROPRIETARY
INFORMATION CLAIMS DATED OCTOBER 23, 2014**

I, Joseph Okpaku, declare as follows:

1. I am the Director of Public Policy for Lyft, Inc. ("Lyft" or the "Company"). The following statements are based on my personal knowledge and are correct to the best of my knowledge.

2. On September 3, 2014, I provided testimony in a hearing related to Lyft's applications for experimental authority in Allegheny County and in Pennsylvania. Part of my testimony included a discussion of the number of rides arranged using the Lyft app in Pennsylvania in 2014. Because Lyft has only operated in Allegheny County, the trip data I provided represents the number of rides taken in a specific mid-sized city (Pittsburgh, PA) during the initial roll out of Lyft's service. As discussed further below, the information I provided regarding Lyft's trip data in a specific mid-sized city during the initial roll out of Lyft's

service is considered by Lyft to be proprietary. To best describe why the trip data is proprietary, I must first discuss the emerging Transportation Network Company ("TNC") industry.

3. The TNC model, which helps drivers connect to passengers, is a new concept. Although informal ride sharing, through the use of bulletin boards and websites like Craigslist, has existed for years, there has never before been a mobile service that enables drivers and passengers to be matched instantly. This model represents a stark change from the more familiar call-and-demand service that taxicabs provide. But change does not happen overnight. TNCs are in a constant effort to educate the public on the benefits of their service and on how they operate. Further, unlike cab companies, which are located in nearly every city and town in the United States, TNCs are present in a very small fraction of cities and their existence is known by an even smaller fraction of people in those cities. TNCs fiercely compete for their business.

4. In terms of gaining market share, individuals are more likely to stay with what they know first. As a result, TNCs, including Lyft, place great importance on their initial roll out in a city. Those first few months are key to assessing the success of their marketing efforts and of the service itself, which then informs future launches.

5. The decision to enter a market is not a minor one. Lyft is not Starbucks; it does not have the resources to saturate multiple markets at one time. Lyft carefully selects each market in which it offers its service and creates a detailed plan for how it intends to succeed in that market. Obviously, a key barometer of success is trip data. If a competitor of Lyft has insight into Lyft's trip data, it has direct insight into Lyft's operational success and its potential revenue and can adjust its operations accordingly.

6. Keeping trip data confidential is important generally, but it is specifically important with regard to Pittsburgh at this stage in the TNC industry's development. Most TNCs

initially began operating in major cities, such as Chicago and Los Angeles, for obvious reasons—the greater the population, the greater the number of potential drivers and passengers. Although the size of those cities did not prevent stiff competition among TNCs, their size left more room for multiple TNCs to operate.

7. In mid-sized cities like Pittsburgh, however, which have a fraction of major cities' population and population density, the lower number of potential drivers and passengers means that it may not be possible to support multiple TNCs, placing particular emphasis on being the first established TNC in the market. That is exactly the scene that is playing out across the country right now, including in Pennsylvania. TNCs are competing to claim significant market share in "uncontacted" mid-sized cities.

8. One result of that competition is that TNCs are constantly assessing their distribution of limited resources. If a TNC senses that it may be at risk of losing or failing to capture market share in a mid-sized city, then it may decide to increase its efforts to improve its market share or it may conclude that its resources would be better used elsewhere. What is an important insight a TNC could have regarding its competitors' success in a city? Trip data. While it may also be useful for a TNC to know specific details of each trip associated with its competitors, e.g., the type of information maintained on a cab driver's trip log, such details are not the key piece of information. The more important information is the number of trips itself.

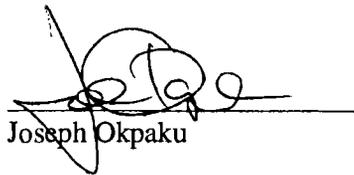
9. It is important to note that, while every city is different, many cities share important similarities. TNCs, just like countless other businesses, use information gained in one city to help inform their business decisions in other, similar cities.

10. For those reasons, Lyft goes to great lengths to protect its trip data overall, particularly with regard to individual mid-sized cities where the fiercest competition is currently

occurring. If Lyft's competitors were to gain insight into the success of Lyft's service in a new, mid-sized city, I have no doubt that the information would be used to place Lyft at a competitive disadvantage, not just in the city where the trip data is from, but in other cities around the country.

I hereby verify that the statements made in this Verification are true and correct to the best of my knowledge and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

October 31, 2014



Joseph Okpaku