

November 3, 2014

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Docket No. A-2014-2415047, Application of Lyft, Inc.

Dear Secretary Chiavetta:

Transmitted herewith for filing is Protestant J.B. Taxi LLC's Reply to Exceptions in the above-referenced proceedings.

Very truly yours,

/s/ electronically filed
David W. Donley
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2415047
APPLICATION OF APPLICATION OF LYFT, INC

PROTESTANT JB TAXI's REPLY TO EXCEPTIONS

Statement of the Case

Applicant proposes to provide passenger transportation services as a Transportation Network Company throughout the Commonwealth relying upon a software platform which links Applicant's customers with Applicant's service providers. Patrons are to pay Applicant under the terms and conditions set by Applicant with drivers who are to receive a portion of that payment from Applicant as independent contractors. The driving force behind the business model is the enlistment of non-professional drivers to perform the services of a public utility.

Applicant styles its proposal as experimental service because it does not propose to operate in the fashion fitting the other classes of passenger service defined by the Commission. Protestant challenges the proposed service because it will likely have a significant and negative impact upon Protestant's call-and-demand services by enabling a competitive service that does not have to follow the requirements of the Public Utility Code as to vehicle safety, driver training and supervision, Commission approval of fare levels and the rules and regulations under which those fares may be collected, and insurance protection for the public.

Oral hearings were convened during which Applicant and Protestants provided testimony and exhibits. In the context of the oral hearing, Applicant acknowledged that the application originally filed in this proceeding did not set forth the business model that Applicant intends to use, were the application approved. Applicant suggests its original request has migrated to a request for "conditional approval" based upon different elements than those set forth by the application or supported in the record. In this context, Applicant next anticipates

that in its deliberations the Commission may and will take into account considerations different from those in the application and record.

The need and justification for adaptation of Applicant's business model to overcome evidentiary shortcomings or regulatory constraints upon public utility services has never been reconciled during the hearing or later with the statutory requirement for the Commission to make findings and draw conclusions based upon the record before it.

Applicant suggests the merits of its proposal and the corresponding findings of the Commission are to be more clearly understood in the course of continuing dialogue about its case rather than an adjudication of its sufficiency to meet the requirements of the Public Utility Code. As a result, several aspects of the service and operations proposed apparently are yet to be finalized should the operating authority be granted. Off-the-record "compliance meetings" (page 11) related to Emergency Temporary Authority are apparently now to be included with the Commission's deliberations in this proceeding. And, with its Exceptions to the Recommended Decision, Applicant at pages 23 and 30 proposes yet other change to its proposal even though its case has been submitted for disposition.

The Recommended Decision was entered on October 9, 2014, concluding that Applicant had failed to sustain its burden under the Public Utility Code and recommending the Applicant's request to provide service be denied.

Applicant has filed exceptions requesting that the Commission reverse the Recommended Decision and authorize its services in an amended form from those originally proposed. These Reply Exceptions are offered in response to Applicant's arguments.

Summary of the Basis for the Recommended Decision

The Administrative Law Judges have determined that the Transportation Network Company services, as proposed under the Lyft software platform, are not likely to be consistent with public safety and the public's interest requirements arising under the Public Utility Code. The determination follows an evaluation of the proposed operations using the Commission's regulatory standards in place for passenger transportation providers. That evaluation suggests significant, material gaps and uncertainties in Applicant's business model where important considerations of public safety and consumer expectations are considered. The evaluation

keys to Applicant's essential purpose to enlist the services of non-professional drivers to provide the transportation required. The reliance on non-professionals, together with the absence of essential controls and oversight common with other passenger service providers, led to a conclusion that Applicant failed to demonstrate its commitment to operate safely and legally. In reaching this conclusion, the Administrative Law Judges noted the absence of any clear showing that continuous insurance protection would be provided, that a training or education program plays any part in Applicant's plans to address insurance issues that might reasonably be anticipated.

Additional deficiencies with the proposal include Applicant's failure to demonstrate its technical fitness to assure ongoing compliance with driver integrity and vehicle safety standards beyond the initial sign-up procedure. The application wholly discounts any reference or need to provide any financial information upon which the Commission could reach a determination related to financial fitness of the Pennsylvania operations. The Administrative Law Judges also noted their concern that the Applicant's inclination appears to be calculated to debate, delay and evade regulatory compliance requirements in lieu of complying with them as directed by the Commission. Because important details have been withheld or are otherwise unavailable, The Administrative Law Judges were not able to make essential findings that Applicant is committed to operating safely and legally.

Exceptions

Applicant files its exceptions as follows:

Exception No.1 The Administrative Law Judges erred in failing to appropriately consider evidence of public need for Lyft's platform across the Commonwealth.

Exception No.2 The Administrative Law Judges erred in ruling that the proposed coverage of Period 1 is inconsistent with the Commission's regulations.

Exception No.3 The Administrative Law Judges erred by imputing unreasonable and unfounded insurance requirements onto Lyft.

Exception No.4 The Administrative Law Judges erred by failing to appropriately weight Lyft's explanation of the relationship between the contractual terms and conditions applicable to all jurisdictions and the company's regulatory obligations in Pennsylvania.

Exception No.5 The Administrative Law Judges erred by finding that Lyft has not demonstrated technical fitness.

Exception No.6 The Administrative Law Judges erred by finding that Lyft has not demonstrated financial fitness.

Exception No.7 The Administrative Law Judges erred in finding that Lyft is not committed to operating safely and legally.

Protestant's Argument

Exception No. 1 – The Commission should reject the contention that the Applicant's business model, characterized as "demand-based and scalable," justifies a departure from the Commission regulatory policy setting forth the requirements for applicant's wishing to become a passenger-transportation service provider to the public. Those requirements are keyed to the Public Utility Code and the Commission's role in implementing it. Arguments suggesting that the requirements no longer serve the public's interest should at a minimum be supported by some showing that the alternative approach appropriately addresses a valid concern other than the Applicant's interest is self-promotion. Protestant believes the services proposed will have an impact upon existing providers who have accepted responsibilities and commitments under the Public Utility Code that Applicant is unwilling to address or accept.

Beyond the baseless argument that it's software platform obviates the requirement to address public need and public utility service, Applicant's argument takes great liberty with the actual content of the evidence in question. Few, if any, mentions or references any need on a county-wide basis for any county in the Commonwealth. The witness' written statements do not show an understanding on the part of the patron of the waivers, disclaimers and the general release from liability anticipated by the applicant. There has been no record developed as to the public's need for the substantial portion of the Commonwealth, and the Administrative Law Judges' determination is consistent with the evidence before them.

Exception No. 2 -- The Commission should reject the contention that the activity triggered by a driver's election to begin his or her "Period 1" engagement is not commercial activity. It is commercial activity because that is the essential purpose of the driver's election. As

commercial activity initiated through the service provider, that service provider should be held to the same standards of other service providers competing in the marketplace.

Exception No. 3 -- The Commission should reject any suggestion that the insurance requirements for passenger transportation providers holding operating authority are not clearly defined and specific. The insurance coverages are commonly available in the Commonwealth but are not attractive to Applicant when it's business model is considered. Could it be that they are too expensive for Applicant ? Others with whom Applicant seeks to compete are required to bear that expense and may not debate the requirement with the Commission. The need to protect the public should not be open to debate simply because an applicant does not require it. Applicant should be required to purchase the same or greater coverage as other providers of passenger transportation.

Exception No. 4 -- In suggesting that binding contracts be construed in accordance with the plain meaning of their words, the Administrative Law Judges have not placed undue weight upon the contents of the Lyft Terms of Service - July 28, 2014. No credible reason is offered by Applicant as to why an insurer, a claims adjuster, or Lyft itself would elect to disregard the contents of the Lyft contract. So too, the Commission should be circumspect in its consideration of Lyft's offer to change the provisions because no assurance exists that the changes would be made or that Lyft could not later change them to reflect whatever it wishes them to say. The Applicant demonstrates an aggressive posture when addressing regulatory requirements not to its liking, and protection of the public would likely require an ongoing monitoring of the changes desired by the Applicant or its insurers, all facilitated through the device of a contract with users who are not subject to Commission oversight.

Exception No. 5 -- The Commission should reject the contention that non-professional drivers and their personal vehicles used to provide public utility services are for some reason to be exempt from the inspection, maintenance and repair responsibilities that other regulated transportation providers must meet. The fluff of Applicant's "multi-part" safety plan ignores the risks implicit with a transportation operation which, under Applicant's proposal, is to go largely without supervision. The enlistment of non-professional drivers, some of whom may not be familiar with the realities of mechanical wear, tear and break-down likely to result with

for-hire services and higher mileages makes the need for monitoring, inspection and periodic maintenance even greater.

Exception No. 6 -- The Commission should not allow the Applicant to deflect attention from the record in this proceeding in favor of the other, separate issue of absentee ownership, venture capital and sophisticated investors. The Administrative Law Judges have accurately assessed the record and reached the only conclusion that can be supported on this record with respect to operations in Pennsylvania.

Exception No. 7 -- The Commission should conclude that debate is not an acceptable substitute for compliance. Applicant's argument should be rejected because Applicant should not be free to pick and choose among its obligations without later having to account for its unwillingness to take appropriate, responsive measures when issued by the Commission. Arguments addressing a "composite back-drop" in lieu of compliance with the directive of the Commission cannot be justified by Applicant.

Conclusion

For these reasons, Protestant requests that the Exceptions be denied and all of the relief requested by Applicant be denied.

Respectfully submitted,

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Certificate of Service

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

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Dated this 3rd day of November, 2014

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