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November 6, 2014

VIA OVERNIGHT DELIVERY & EMAIL

Secretary's Bureau
Attn: Secretary Rosemary Chiavetta
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, Pennsylvania 17120

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NOV - 6 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: *Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette
v. Lyft***
PUC Dkt. No. P-2014-2442001
PUC Ref. Dkt. No. A-2014-2415045

Dear Secretary Chiavetta:

Enclosed please find the Motion to Strike the Petition for Reconsideration of Lyft, Inc. filed on behalf of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette ("The Post-Gazette").

Out of an abundance of caution, The Post-Gazette will also be filing a substantive response to Lyft's Petition for Reconsideration and Petition for Partial Stay or Supersedeas prior to the November 14, 2014 deadline set by your November 4, 2014 letter.

The Post-Gazette's response will detail why reconsideration and the request for stay or supersedeas should be denied on the merits.

Respectfully,



Frederick N. Frank

FNF/zng

cc: Administrative Law Judge Mary D. Long (via e-mail)
Administrative Law Judge Jeffrey A. Watson (via e-mail)
Adcolu A. Bakare, Esquire, *counsel for Lyft, Inc.* (via e-mail)
Bohdan R. Pankiw, Esquire, *Chief Counsel for the PUC* (via email)
Michael S. Henry, Esquire, *counsel for Executive Transportation, Inc.* (via email)
David William Donley, Esquire, *counsel for JB Taxi LLC t/a Country Taxi Cab*
(via email)
Samuel Marshall, *CEO & President of Insurance Fed. Of Pennsylvania* (via email)
Lloyd R. Persun, Esquire, *counsel for MTR Trans. Inc. and Billtown Cab* (via email)
Dennis G. Weldon, Jr., Esquire, *counsel for Philadelphia Parking Authority* (via
first class mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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KIM LYONS and
PG PUBLISHING, INC. d/b/a
THE PITTSBURGH POST-GAZETTE,
Petitioners

v.

LYFT, INC.
Respondent

: PA PUBLIC UTILITY COMMISSION
: SECRETARY'S BUREAU

: PUC Dkt. No. P-2014-2442001
: PUC Ref. Dkt. No. A-2014-2415045

: **MOTION TO STRIKE
THE PETITION FOR
RECONSIDERATION
OF LYFT, INC.**

Filed on behalf of:
Petitioners, Kim Lyons and
The Pittsburgh Post-Gazette

Counsel of Record
for this Party:

Frederick N. Frank, Esq.
Pa. I.D. No. 10395

Ellis W. Kunka, Esq.
Pa. I.D. No. 311929

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION** NOV - 6 2014

KIM LYONS and
PG PUBLISHING, INC. d/b/a
THE PITTSBURGH POST-GAZETTE,
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v.

LYFT, INC.
Respondent

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PUC Dkt. No. P-2014-2442001
PUC Ref. Dkt. No. A-2014-2415045

**MOTION TO STRIKE THE PETITION FOR RECONSIDERATION OF
LYFT, INC.**

Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette (collectively "The Post-Gazette") file the within Motion to Strike the Petition for Reconsideration, of Lyft, Inc.

I. Statement of Material Facts

1. This motion arises from two separate, but interrelated, Petitions before the Pennsylvania Public Utility Commission ("PUC" or the "Commission"). First, on September 10, 2014, The Post-Gazette brought a Petition for an Interim Emergency Order ("The Post-Gazette's Petition") at PUC Dkt. No. P-2014-2442001.

2. Second, Lyft, Inc. ("Lyft") filed a Petition for Interlocutory Review and Answer to a Material Question ("Petition for Interlocutory Review") at PUC Dkt. No. A-2014-2415045 on September 23, 2014, seeking review of the Administrative Law

Judges' September 2, 2014 Interim Order denying Lyft's Motion for Protective Order.

3. Both Petitions relate to the issue of sealing trip data and insurance data from a September 3, 2014 hearing in PUC Dkt. No. A-2014-2415045. The Post-Gazette seeks to unseal this information; Lyft opposes that effort, asserts the information is proprietary, and should remain under seal.

4. On October 23, 2014, the Commission decided both The Post-Gazette's Petition and Lyft's Petition for Interlocutory Review. Regarding The Post-Gazette's Petition, the Commission denied that petition in its entirety.

5. As to Lyft's Petition for Interlocutory Review, the Commission found that Lyft's trip data was not proprietary and ordered that the record be entirely unsealed in ten days, to wit by November 3, 2014.

6. On October 31, 2014 Lyft filed a Petition for Partial Stay or Supersedeas ("Petition for Stay") with the PUC asking for a stay of the order unsealing the record, and noting that Lyft intended to file a Petition for Reconsideration by November 3, 2014. On November 3, 2014, Lyft filed a *Petition for Reconsideration* with the PUC.

II. Lyft's Petition for Reconsideration Should Be Stricken

7. Under the PUC regulations: "The Commission may reject a filing if it does not comply with any applicable statute, regulation or order of the Commission." 52 Pa. Code § 1.38.

8. Here, the October 23, 2014 Order stated it was to go into effect ten days after it was entered. The tenth day was Sunday, November 2, 2014. Pursuant to PUC

regulations, when the last date of a time period is a Saturday, Sunday, or holiday, the time period is deemed to end on the next day that is not a Saturday, Sunday or holiday. 52 Pa. Code § 1.12(a). In this instance, Monday, November 3, 2014, was the next effective day after November 2, 2014. Therefore, the Commission's October 23, 2014 Order became effective on November 3, 2014.

9. Pursuant to 52 Pa. Code § 5.572, "Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered *or otherwise becomes final*." (emphasis added).

10. Pursuant to 52 Pa. Code § 1.12(a) and the Commission's October 23, 2014 Order, the entire proceedings were to be unsealed on November 3, 2014. Thus the Order became final on November 3, 2014.

11. Per 52 Pa. Code § 5.572, Lyft was required to file its Petition for Reconsideration before the order "becomes final" on November 3, 2014, which Lyft failed to do. Thus, the Petition for Reconsideration is untimely and should be stricken.

12. The Post-Gazette notes that Lyft's Petition for Stay was timely. However, upon striking Lyft's untimely Petition for Reconsideration, there would be no petition pending before the Commission justifying a stay. Therefore, upon striking the Petition for Reconsideration, the Commission should make the entire September 3, 2014 transcript available.

13. This procedural defect should not be excused considering the common law and First Amendment rights at issue. The records have remained sealed for over two months, which is a substantial injury to The Post-Gazette and the public.

14. Further, the Commission should strike Lyft's Petition for Reconsideration because it improperly relies upon an October 31, 2014 Affidavit from Joseph Okpaku, Director of Public Policy for Lyft.

15. As explained in The Post-Gazette's Response to Lyft's Petition for Interlocutory Review, it is procedurally and substantively improper for Lyft to be permitted to introduce additional evidence. Administrative Law Judges Watson and Long closed the record on September 18, 2014.

16. The Commission's October 23, 2014 Order on pages 16-17 specifically noted:

It was incumbent upon Lyft to timely make its case before the ALJs. The evidentiary record relied upon by the ALJs in this regard cannot be supplemented by late-filed affidavits. To allow supplemental evidence at this juncture would amount to a unilateral argumentation of the record, depriving Protestants of their rights to cross-examination and well as offer rebuttal evidence. Under these circumstances, we find that Lyft cannot, via a late filed affidavit, supplement the record.

Despite, this clear directive from the Commission, Lyft again attempts to submit another affidavit.

17. Therefore, the Commission should strike Lyft's Petition for Reconsideration.

Conclusion

18. The Post-Gazette asks that the Commission strike the entirety of Lyft's Petition for Reconsideration, or in the alternative The Post-Gazette asks that the Commission strike the affidavit of Mr. Okpaku attached to Lyft's Petition for Reconsideration.¹

WHEREFORE, The Post-Gazette requests the Commission strike Lyft's Petition for Reconsideration.

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO
& POCRASS, P.C.

DATED: November 6, 2014

By: *Frederick N. Frank*
Frederick N. Frank, Esq.
Ellis W. Kunka, Esq.
Attorneys for Kim Lyons and
The Pittsburgh Post-Gazette

¹ Out of an abundance of caution, The Post-Gazette will also be filing a substantive response to Lyft's Petition for Reconsideration and Petition for Stay prior to the November 14, 2014 deadline set by the Secretary's November 4, 2014 letter. Said response will detail why reconsideration and the request for stay or supersedeas should be denied on the merits.

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Motion to Strike the Petition for Reconsideration of Lyft, Inc. upon the person as set forth below, in accordance with 52 Pa. Code § 1.54.

Service by E-Mail

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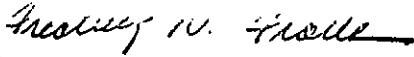
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Service by First Class Mail

Philadelphia Parking Authority
Dennis G. Weldon Jr., Esq.
Bryan L. Heulitt Jr., Esq.
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Date: November 6, 2014



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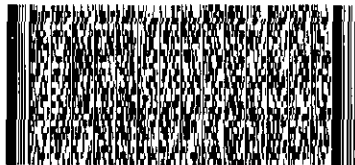
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