



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 7, 2014

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Lyft, Inc.
Docket No. C-2014- 2422713

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer to Preliminary Objections on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please feel free to contact me.

Sincerely,

Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Enclosure

cc: ALJ Mary D. Long and ALJ Jeffrey A. Watson
As per certificate of service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2422713
	:	
Lyft, Inc.	:	
Respondent	:	

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE PRELIMINARY OBJECTIONS OF LYFT, INC.**

NOW COMES, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and files this Answer to the Preliminary Objections of Lyft, Inc. (Lyft or Respondent), pursuant to 52 Pa. Code § 5.101(f). In support thereof, I&E avers as follows:

I. BACKGROUND

On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Lyft, Inc. alleging, *inter alia*, that Lyft acts as a broker of transportation for compensation between points within the Commonwealth through its internet and mobile application software (the Lyft app), which connects passengers to individuals who have registered with Lyft as independent ride-sharing operators (Lyft driver). I&E sought a civil penalty in the amount of \$130,000, as well as an additional \$1,000 per day for each day that Lyft

continued to operate without authority after the date of filing of I&E's Complaint. In addition, I&E requested that the Commission direct Lyft to cease offering its ride-sharing passenger transportation service until the service conforms to the laws and regulations of the Commonwealth. On June 26, 2014, Lyft answered the Complaint and denied the allegations set forth therein.

During the pendency of the above-captioned Complaint proceeding, I&E sought and obtained injunctive relief against Lyft. On June 16, 2014, I&E filed a Petition for Interim Emergency Relief seeking an order from the Commission directing Lyft to immediately cease and desist from brokering passenger transportation service until it receives the requisite authority to do so.¹ After a hearing on June 26, 2014, the presiding Administrative Law Judges (ALJs) granted I&E's interim emergency relief and directed Lyft to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles until Lyft secures appropriate authority from the Commission.² The Cease and Desist Order also certified as a material question to the Commission the issue of granting or denying I&E's requested relief by an interim emergency order.

¹ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847.

² *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847 (Order on Interim Emergency Relief entered July 1, 2014) (hereinafter referred to as "Cease and Desist Order").

By Order entered on July 24, 2014, the Commission determined that I&E met the requirements for obtaining interim emergency relief.³ The Commission directed Lyft to immediately cease and desist from facilitating transportation through its digital platform until it secures appropriate authority from the Commission or I&E's Complaint is dismissed by a final and unappealable order.

Despite this directive, Lyft continued to facilitate passenger transportation for compensation through the Lyft app, in violation of the Commission's Order, up until the time it received emergency temporary authority from the Commission to operate.⁴ On October 8, 2014, I&E filed an Amended Complaint at the above-captioned docket, which updates the violations alleged by including a "per ride" violation component and recalculates the appropriate civil penalty as the relief request.

On October 28, 2014, Respondent, through counsel, filed an Answer to the Amended Complaint. On that same date, Respondent filed Preliminary Objections. In its Preliminary Objections, Lyft argues that I&E fails to state a claim upon which relief can be granted and alleges that it did not broker transportation service subject to the Commission's jurisdiction during the time periods referenced in the Amended Complaint. Lyft further argues that the Commission lacks jurisdiction to grant I&E's requested relief

³ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847 (Opinion and Order entered July 24, 2014).

⁴ *Application of Lyft, Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2432304 (Order entered July 24, 2014).

and avers that violations of the interim orders granting I&E emergency relief may not be the basis upon which relief in the form of civil penalties may be granted.

As set forth in detail below, I&E's Amended Complaint sets forth a claim on which relief can be granted. This is nothing more than another attempt on Lyft's part to wrongfully avoid the Commission's jurisdiction. Moreover, Lyft's claim that the Commission does not have jurisdiction to impose civil penalties with regard to the violations alleged is dubious at best and must be summarily dismissed.

II. REPLIES TO PRELIMINARY OBJECTIONS

1. Denied. This Paragraph does not contain a preliminary objection but is only introductory in nature and therefore no Answer is required.

2. Denied. This Paragraph states a conclusion of law to which no response is required and is deemed denied.

3. Denied. It is denied that the Commission lacks jurisdiction to grant the relief requested in I&E's Amended Complaint. It is also denied that I&E's Amended Complaint fails to state a claim on which relief can be granted.

4. Denied. It is denied that Lyft did not engage in the business of a broker for the trips alleged in the Amended Complaint. By Lyft's own admission, its digital software "connects" passengers with drivers for the sole purpose of transportation. "Connecting" passengers with drivers fits squarely within the definition of "broker" in Section 2501 of the Public Utility Code (Code), 66 Pa.C.S. § 2501. Should it be determined that Lyft's services are more accurately characterized as those of a motor carrier, I&E's Amended Complaint encompasses Lyft's unlawful operation as a motor carrier by alleging that Lyft

provided for the transportation of persons for compensation in the Commonwealth of Pennsylvania without holding authority to do so, in violation of Section 1101 of the Code, 66 Pa.C.S. § 1101. This is precisely why Lyft filed applications seeking a Certificate of Public Convenience.⁵

5. Denied. The case law cited speaks for itself. This Paragraph states conclusions of law to which no response is required and is deemed denied. By way of further answer, by connecting passengers with Lyft drivers through the Lyft app, Lyft arranges for such transportation to occur. But for the existence of the Lyft app, the transportation between the Lyft driver and passenger would not have been arranged.

6. Denied. By way of further answer, by connecting passengers with Lyft drivers through the Lyft app, Lyft arranges for such transportation to occur. But for the existence of the Lyft app, the transportation between the Lyft driver and passenger would not have been arranged.

7. Denied. It is denied that Lyft did not facilitate or provide passenger transportation for compensation between points within the Commonwealth of Pennsylvania during the time periods referenced in the Amended Complaint. Lyft's unlawful actions are well within the purview of the Commission's jurisdiction.

8. Denied. The presiding ALJs and the Commission have already rejected the

⁵ See *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*, Docket No. A-2014-2415045; *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.

contention that Lyft operated the Lyft app under a donation system prior to receiving emergency temporary operating authority. Cease and Desist Order at 5-6, 8-9. At the hearing regarding I&E's interim emergency relief, I&E's witness established that he paid for each trip that he took after initiating service requests through the Lyft app. *Id.* at 6. Further, I&E's witness received e-mails and invoices from Lyft advertising "discounts" and "lower prices." *Id.* Lyft's own website indicated that Lyft charged a set amount for rides taken in Pittsburgh. *Id.* Even if Lyft had shown at the hearing that it collects donations, which it did not, the Commission has found that donations can constitute compensation. If there is clear and uncontradicted testimony of an indiscriminate holding out to the general public to provide transportation service, then whether a fixed charge was demanded is irrelevant. *Commonwealth v. Babb*, 70 A.2d 660 (Pa. Super. 1950). (Finding that it was not necessary for defendant to charge a specific fee or even ask for compensation in order to conclude that he operated as a taxi without a Certificate of Public Convenience.) "Such an arrangement is only an artifice or subterfuge." *Id.* at 668. *See also Pa. PUC v. Israel*, 52 A.2d 317 (Pa. 1947) (affirming a lower court order enjoining drivers from providing transportation service when the funds received for the transportation are obtained as a "donation or tip" and not by a fixed charge).


9. Denied. The violations alleged in I&E's Amended Complaint constitute violations of the Code as clearly and concisely pled by I&E. *See* Paragraphs No. 30 and 31 of the Amended Complaint. As violations of the Code, I&E is entitled to seek relief in the form of civil penalties pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301.

10. Denied. The calculation of the civil penalty on a "per-ride" basis in I&E's

Amended Complaint is lawful and appropriate. The transportation brokered and provided by Lyft through the Lyft app was performed through rides or trips. Each ride or trip taken by initiating a service request through the Lyft app constitutes a separate and distinct violation in that each was performed without Commission authority.

WHEREFORE, the reasons stated above, the Bureau of Investigation and Enforcement respectfully requests that the Commission dismiss Respondent's Preliminary Objections and sustain I&E's Complaint.

Respectfully submitted,



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Dated: November 7, 2014

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 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

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