**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 18, 2014

Commissioners Present:

Robert F. Powelson, Chairman, Joint Statement

John F. Coleman, Jr., Vice Chairman, Dissenting Statement

James H. Cawley

Pamela A. Witmer, Joint Statement

Gladys M. Brown, Statement

Application of Lyft, Inc., a corporation of the State of A-2014-2415047

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

**OPINION AND ORDER**

Contents

[I. Procedural History 3](#_Toc404095145)

[II. Related Application Proceedings 6](#_Toc404095146)

[III. Discussion 7](#_Toc404095147)

[A. Legal Standard 9](#_Toc404095148)

[B. Experimental Service 12](#_Toc404095149)

[C. Evidentiary Criteria for Motor Carrier Applications 19](#_Toc404095155)

[1. Public Demand or Need 19](#_Toc404095156)

[2. Evidence of Fitness – Driver Integrity 24](#_Toc404095157)

[3. Evidence of Fitness – Vehicle Safety 28](#_Toc404095158)

[4. Evidence of Fitness – Employees 33](#_Toc404095159)

[5. Insurance 35](#_Toc404095160)

[6. Propensity to Operate Safely and Legally 49](#_Toc404095161)

[7. Financial Fitness 54](#_Toc404095162)

[8. Rates 56](#_Toc404095163)

[9. Record Keeping 58](#_Toc404095164)

[10. Waiver of Regulations 59](#_Toc404095165)

[11. Compliance Plan and Periodic Audits 59](#_Toc404095166)

[IV. Conclusion 60](#_Toc404095167)

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Application of Lyft, Inc. (Lyft or Applicant) for authority to operate as a motor common carrier of persons in experimental service between points in Pennsylvania (Application) filed on April 3, 2014; (2) the Exceptions of Lyft filed on October 24, 2014, to the Recommended Decision of Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson, issued on October 9, 2014, denying the Application; and (3) the Exceptions of various Protestants filed on October 27, 2014, to Conclusions of Law Nos. 4 and 5 in the Recommended Decision.

The following Protestants filed the above referenced joint Exceptions to Conclusions of Law Nos. 4 and 5: (1) Executive Transportation Company, Inc. (Limousine Protestant); (2) Aceone Trans Co., AF Taxi, Inc., AG Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BNG Cab Co., BNA Cab Co., BNJ Cab, Inc., Bond Taxi, Inc., BSP Trans, Inc., Double A Cab Co., FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., Jaydan, Inc., LAN Trans, Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Cab, Inc., MG Trans Co., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., Rosemont Taxicab Co., Inc., S&S Taxi Cab, Inc., SAJ Trans, Inc., Saba Trans, Inc., SF Taxi, Inc., Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., VAL Trans, Inc., VB Trans, Inc., and VSM Trans, Inc. (Medallion Taxicab Protestants); and (3) BM Enterprises, Inc., t/a A.G. Taxi, Bucks County Services, Inc., Dee Dee Cab Company, Germantown Cab Company, Ronald Cab, Inc., t/a

Community Cab, Shawn Cab, Inc., t/a Delaware County Cab, and Sawink, Inc., t/a County Cab (Non-Medallion Taxicab Protestants) (collectively Joint Protestants).[[1]](#footnote-1)

On November 3, 2014, Replies to Exceptions were filed by the following: Lyft; the Joint Protestants; and the Insurance Federation of Pennsylvania (Insurance Federation). JB Taxi LLC (JB Taxi) filed Replies to Exceptions on November 4, 2014.[[2]](#footnote-2) For the reasons set forth below, we shall grant Lyft’s Exceptions, in part, and deny them, in part; deny the Joint Protestants’ Exceptions; reverse the Recommended Decision; and grant the Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted; consistent with this Opinion and Order.

# Procedural History

On April 3, 2014, Lyft filed its Application for experimental service for passenger trips between points in Pennsylvania.[[3]](#footnote-3) The Application provided the following:

This Application of Lyft, Inc. (“Lyft”) for an experimental service proposes to operate a peer-to-peer ride-sharing network using digital software to facilitate transactions between passengers and ridesharing operators using their own vehicles to provide transportation (known as a transportation network service) between points within the Commonwealth of Pennsylvania for the purpose of enhancing access to transportation alternatives, supplementing existing public transportation, reducing single occupancy vehicle trips, vehicle ownership and usage, and assisting the state in achieving reductions in greenhouse gas emissions.

Notice of the application was published in the *Pennsylvania Bulletin* on April 19, 2014 at 44 *Pa. B*. 2493. The notice provided that the deadline for the filing of protests was May 5, 2014.

Numerous carriers and other entities filed Protests. On May 5, 2014, the Joint Protestants filed virtually identical Protests to the Application. JB Taxi also filed a Protest on May 5, 2014. The Applicant filed Preliminary Objections seeking dismissal of these Protests on May 27, 2014. By Interim Order dated June 26, 2014, the ALJs dismissed the Preliminary Objections. Additional Protests were filed by Shamokin Yellow Cab, Paul’s Cab Service, and Billtown Cab Co, Inc (Billtown).[[4]](#footnote-4) The Applicant filed Preliminary Objections to these Protests as well. By Interim Orders dated June 24, 2014, the ALJs dismissed the Preliminary Objections to the Protests of Paul’s Cab Service[[5]](#footnote-5) and Billtown Cab. The ALJs granted the Preliminary Objection to the Protest of Shamokin Cab and that Protest was dismissed by Initial Decision dated June 24, 2014.

MTR Transportation Co., Inc. (MTR) filed a Protest on May 2, 2014.[[6]](#footnote-6) The Applicant filed a Motion for Partial Judgment on the Pleadings which sought dismissal of the Protest. The ALJs denied the motion by Interim Order dated June 26, 2014.

On July 21, 2014, the Applicant filed a Petition for Interlocutory Review and Answer to a Material Question, which sought review of the interim orders dismissing the Applicant’s preliminary objections to the Protests filed by the various carriers. By Order entered August 18, 2014, at Docket No. P-2014-2433430, the Commission declined to answer the material question.

The Insurance Federation and the Pennsylvania Association for Justice filed Protests to the Application on May 5, 2014. The Applicant filed Preliminary Objections. By Initial Decision dated June 20, 2014, the ALJs dismissed the Protests for lack of standing. The Insurance Federation filed Exceptions to the Initial Decision on July 28, 2014, and by Order entered on August 14, 2014, the Commission reversed the dismissal of the Insurance Federation.

On May 5, 2014, the Philadelphia Parking Authority filed a Petition to Intervene. No party objected to the intervention, and the ALJs granted the intervention by Prehearing Order dated July 25, 2014.

Evidentiary hearings were held on August 27, 2014, and September 3, 2014. The Applicant was represented by counsel who presented the testimony of two witnesses. The Applicant also offered three exhibits which were admitted into the record. JB Taxi was represented by counsel who offered two exhibits which were admitted into the record. The Joint Protestants were represented by counsel who presented the testimony of five witnesses on behalf of his various clients. The Insurance Federation also appeared and was represented by counsel who offered the testimony of one witness and four exhibits which were admitted into the record.

The hearing resulted in a transcript of 582 pages.[[7]](#footnote-7) On September 15, 2014, Lyft, the Insurance Federation, and JB Taxi filed Briefs. The Joint Protestants filed a Brief on September 16, 2014. The record was closed by Order dated September 17, 2014.

As previously discussed, the Applicant and the Joint Protestants filed Exceptions on October 24, 2014, and October 27, 2014, respectively. On November 3, 2014, Lyft, the Joint Protestants, and the Insurance Federation filed Replies to Exceptions. JB Taxi filed Replies to Exceptions on November 4, 2014.

# Related Application Proceedings

On April 13, 2014, Lyft filed an Application, at Docket No.   
A-2014-2415045, requesting authority to provide experimental service between points within Allegheny County (Allegheny Application). By Recommended Decision issued on October 9, 2014, ALJs Long and Watson denied the Allegheny Application, finding that the Applicant failed to meet its burden of proof under 52 Pa. Code § 41.14. Allegheny Application R.D. at 30, 32. By Opinion and Order issued commensurate with this Opinion and Order, the Commission, among other things, reversed the ALJs and acted to grant the Allegheny Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted.

On July 16, 2014, Lyft filed an application for Emergency Temporary Authority (ETA) to operate experimental transportation network service between points in Allegheny County. On July 24, 2014, the Commission approved the application contingent upon the Applicant meeting specific insurance and tariff requirements. *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) (*July 2014 ETA Order*). Pursuant to 52 Pa. Code § 3.383(b)(4)(i), an ETA is valid only for an initial period not to exceed sixty days.

On September 29, 2014, Lyft filed a Petition for Amendment of the *July 2014 ETA Order* and a Petition for Extension of the ETA. As to the amendment request, Lyft sought to eliminate or waive the requirements pertaining to the vehicle age and mileage restrictions, as well as the provision in the *July 2014 ETA Order* requiring all of Lyft’s drivers to notify their insurers, in writing, of their intent to operate in Lyft’s service. On October 10, 2014, we granted the Applicant’s request to extend its ETA until the Commission issued a final determination on its experimental authority application. However, we denied Lyft’s request to amend the *July 2014 ETA Order*. *See*, *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 October 10, 2014) (*October 2014 ETA Order*).

# Discussion

The Application before us is a request for motor carrier service under our experimental service Regulation. 52 Pa. Code § 29.352. Specifically, Lyft is proposing to provide a new and innovative transportation network service throughout Pennsylvania. Our experimental service Regulation permits the Commission to approve this type of motor carrier service not currently contemplated by our Regulations on a short-term basis of two years. During the certificate term, we have the discretion to grant the certificate holder time to concretely demonstrate that the service is beneficial to the public and can be operated safely. Further, the Regulation affords the certificate holder the opportunity to demonstrate that it will comply with the regulatory authority of the Commission.

We find that the service proposed by Lyft should be encouraged in a way that is consistent with the Commission’s mission to protect the public interest and foster new technologies. Therefore, in light of the evidence of need established by Lyft, we will exercise our discretion to approve the Application for experimental service, which grants operating rights for two years, subject to the conditions and requirements set forth in Appendix A and discussed in this Opinion and Order. We conclude that a two-year time frame is appropriate, given the dynamic and evolving nature of the transportation network service business model. Most of the conditions herein largely mirror our Regulations, as well as Lyft’s existing operating practices. Consistent with our ability to set appropriate parameters for experimental service, we also waive certain Regulations that do not apply to the transportation network service business model.

As our guiding principle, we want to ensure that the provision of service is done in a safe manner with appropriate insurance coverage. We believe that this goal can be achieved under Lyft’s proposal with the conditions and provisions required in this Opinion and Order and Appendix A. Additionally, we believe that this proposal will also serve our goal of ensuring availability of service. We emphasize that Lyft will not be granted authority for experimental service until it has demonstrated full and complete compliance with the conditions herein. If Lyft rejects these conditions, it is no longer authorized to provide experimental service in Pennsylvania. Likewise, if Lyft fails to comply with any of the terms of this Opinion and Order, the Commission will not hesitate to take appropriate enforcement action.

The ALJs made sixty-eight Findings of Fact and reached seven Conclusions of Law. R.D. at 4-14; 31-32. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## Legal Standard

Pursuant to Section 1103(a) of the Public Utility Code (Code), 66 Pa. C.S.

§ 1103(a), this Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” In order to make these determinations on traditional common carrier applications, the Commission, in a policy statement promulgated at Section 41.14 of the Pa. Code, set forth the criteria to be taken into consideration.[[8]](#footnote-8) In an application for experimental service however, there is no requirement that all of these factors need to be strictly met in order to obtain a Certificate of Public Convenience since Section 29.352 of our Regulations allows the Commission to both require additional regulations or requirements and waive regulations that do not apply to the Experimental Service described in an application. Nevertheless, we believe it prudent to at least consider these standards as part of our evaluation here.

These factors, found at 52 Pa. Code § 41.14, are the following:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications--statement of policy.

(a)An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§29.331--29.335 (relating to limousine service.)

The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.,* 72 Pa. P.U.C. 262, 274 (1990) (*Blue Bird*).

Thus, in order to approve an application for a Certificate, the Commission must find that an applicant has sustained its burden of proving, by substantial evidence, a public demand or need for the service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally. The Protestants also bear a burden of proof. To defeat an application, a protestant must show that the entry of the applicant into the transportation market would endanger or impair the operations of existing common carriers to the extent that it would be contrary to the public interest. 52 Pa. Code

§ 41.14(c). As we discussed in *Blue Bird*, “[o]nly the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c).” 72 Pa. P.U.C. at 286.

In *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## Experimental Service

### Application

Lyft proposes to offer transportation network service through a mobile software application (the Lyft app) to connect individuals seeking transportation with qualified drivers using their own vehicles. Lyft Application, Attachment A at 1. Lyft explains that, as the certificated entity, it would be responsible for providing a durable record of each trip completed through its platform, including the identity of the passenger and driver, a photograph of the vehicle and a description of each trip, including the time and location of origination and destination and a GPS record of the route taken. Lyft states that its proposal would make it possible for non-professional and occasional drivers to provide transportation, enhancing access to and the availability of affordable, high-quality transportation services for Pennsylvania residents while ensuring the safety of riders. Lyft avers that the proposed service would reduce single-occupancy trips and vehicle ownership, serve as a supplement to existing transportation options, and ultimately reduce greenhouse gas emissions. Lyft Application, Attachment A at 2.

For a potential passenger to use the platform, the passenger signs up and provides personal information to create a profile and provides credit card or bank debit card information. The passenger then uses the Lyft app to request a ride. The GPS feature on a passenger’s mobile telephone will search automatically for the Lyft driver that is the closest in distance to the passenger. Tr. at 235-36. If the driver accepts the ride, the driver is provided with the passenger’s location. At the end of the ride a fare is generated, and payment is made through the app on the passenger side, either at the conclusion of the ride or within twenty-four hours after the ride has ended. Tr. at 236. Lyft’s drivers will not solicit or accept street-hails or passengers from taxi stands. Lyft Application, Attachment A at 3.

### Positions of the Parties

The Joint Protestants argued that the Applicant is seeking authorization to operate a “transportation network company” (TNC), a term that is undefined under the Code. *See e.g.,* Joint Protestants’ Brief at 13. According to the Joint Protestants, the General Assembly has not empowered the Commission to grant Certificates of Public Convenience to transportation network companies. Although the Commission may grant certificates to certain classes of transportation, the Joint Protestants contended that the Application must be denied because Lyft is not a “motor carrier” as defined in Section 102 of the Code, 66 Pa. C.S. § 102. The Joint Protestants averred that Lyft is not a “motor carrier” because, by its own admission, it is not a transportation company and does not provide any transportation service. Joint Protestants’ Brief at 14-15.

The Joint Protestants also stated that the Applicant meets the definition of a broker under Section 2501 of the Code, 66 Pa. C.S. § 2501, and not a motor carrier. Joint Protestants’ Brief at 16. They averred that the Applicant is a broker because the Applicant indicates that it will use its mobile software application to arrange rides between prospective passengers and private individuals using their own vehicles who will provide the transportation service; the Applicant does not propose to provide transportation itself. *Id*. at 16-17. Additionally, the Joint Protestants asserted that, even if the Applicant amended its Application to seek authorization to act as a broker, the Commission would not have the authority to grant such an application, because Lyft proposes to facilitate transportation service using uncertificated carriers or to facilitate illegal commercial ridesharing. *Id*. at 17-19. Moreover, the Joint Protestants believed that the Application should be denied, because the proposed service does not differ in any meaningful way from other motor carrier services and, therefore, does not fall within the definition of experimental service under 52 Pa. Code § 29.13. Joint Protestants’ Brief at 19-23.

Similarly, JB Taxi argued that Lyft’s proposed service requires a passenger’s broker license. JB Taxi’s Brief at 3. JB Taxi averred that Lyft’s proposed services fall specifically into the service described in the Code as the operation of a passenger broker, and in construing the words of the Code, the words should be given their plain meaning. *Id*. at 4 (citing 66 Pa. C.S. § 2501(b)). JB Taxi stated that Lyft’s proposed services qualify as a passenger broker operation because Lyft will estimate a fare for the passenger and will collect a fare and distribute a portion of it to the driver for compensation, and the terms of its service provide that its business is to arrange for travel for compensation by passengers using drivers under contract to Lyft. JB Taxi’s Brief at 5. JB Taxi characterized Lyft’s drivers as contract motor carriers within the meaning of Section 2501(b)(1) of the Code, 66 Pa. C.S. § 2501(b)(1), based on the premise that Lyft’s drivers will assume all liability and responsibility for highway operations, and the drivers’ independence, which Lyft emphasizes as the hallmark of its proposed service. JB Taxi’s Brief at 5-6.

The Applicant averred that the transportation network service it proposes to provide should be regulated as experimental service under 52 Pa. Code §§ 29.352 and 29.13(6), because it will provide common carrier service for passengers that differs from the services currently defined in the Commission’s Regulations. Lyft stated that the service it proposes is consistent with common carrier service under the Code. Lyft’s Brief at 15. Specifically, Lyft argued that the definition of “common carrier” under Section 102 of the Code, 66 Pa. C.S. § 102, does not require ownership or actual operation of facilities or equipment used in transportation. Lyft’s Brief at 16.

### Recommended Decision

The ALJs disagreed with the Protestants’ contentions that the Applicant as a TNC cannot be considered a motor carrier and that Lyft is ineligible for a Certificate of Public Convenience. R.D. at 15. First, the ALJs explained that the Code does not require the Applicant to own vehicles in order to be a motor carrier. *Id*. at 16. In support, the ALJs referenced the following definitions under Section 102 of the Code, 66 Pa. C.S. § 102: (1) a transportation public utility is: “Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . . transporting passengers or property as a common carrier;” (2) a “common carrier” is a person or corporation “holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers . . . .;” and (3) a “common carrier by motor vehicle” is a common carrier which undertakes the transportation of passengers within the Commonwealth “by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes the motor vehicle, with or without driver, for transportation for use in the transportation of persons . . . .” R.D. at 15-16.

Further, the ALJs did not consider the Applicant’s own statements that it is not providing transportation service to be persuasive. Rather, viewing the proposed service as a whole, the ALJs deemed the Applicant as seeking to offer transportation to passengers for compensation and determined that the Commission has the jurisdiction to grant a Certificate of Public Convenience to a TNC. R.D. at 16.

Next, the ALJs recognized that the Commission regulates various types of motor carrier service and that not all forms of common carrier transportation fit squarely within these categories. *Id*. at 16-17. As such, the Commission promulgated a regulation for “experimental service” to accommodate a proposed transportation service not encompassed in the other regulatory categories. The ALJs concluded that it is appropriate to consider the Applicant’s transportation service under the experimental service regulation as a motor carrier because it does not fit within any of the other regulatory categories including as a broker of transportation service. *Id.* at 17.

The ALJs explained the following in support of their finding:

[Section 29.352] of the regulations permits the Commission to approve a type of motor carrier service not currently contemplated by the regulations on a short-term basis, which permits the Commission (or the General Assembly) the time to promulgate additional regulations [or laws] to accommodate the proposed service if it is appropriate to do so. It also provides the certificate holder with the time to concretely demonstrate that the service proposed is indeed a public benefit, that the service can be operated safely and that the certificate holder will maintain an appropriate relationship with the Commission as the regulatory body. Section 29.352 further provides the Commission with the flexibility to waive the application of certain regulations that are not appropriate to impose and to also impose additional requirements which are not explicitly provided for in the Code, particularly informational and reporting requirements.

R.D. at 19 (citing *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*, Docket No. A-2014-2410269 (Order entered May 22, 2014)).

### Exceptions

The Joint Protestants filed Exceptions to Conclusions of Law Nos. 4 and 5. Conclusion of Law No. 4 stated that: “[i]t is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.” Conclusion of Law No. 5 stated the following: “[t]he Commission has jurisdiction over this matter as the application seeks authorization to provide ‘experimental service,’ which is a class of motor carrier service defined under 52 Pa. Code § 29.13.” R.D. at 31. In support, the Joint Protestants essentially reiterated the arguments summarized above. Joint Protestants’ Exc. at 2-10.

In its Replies, the Applicant repeated its prior arguments and added that the Commission has preliminarily spoken on this issue in the *October 2014 ETA Order* when it granted Lyft’s ETA Application. Lyft noted that the Commission stated “[t]hat [Lyft’s] proposed experimental service incorporates innovative technology does not change the fundamental character of the service – transportation for compensation.” Lyft’s R. Exc. at 3 (quoting *October 2014 ETA Order* at 11).

### Disposition

Upon review, we agree with the ALJs that the Commission has jurisdiction to grant a Certificate of Public Convenience to a TNC offering transportation services to passengers for compensation. In contrast to the interpretations offered by the Joint Protestants, the Code clearly does not require the Applicant to own vehicles in order to be a motor carrier. Rather, the definitions of transportation “public utility,” “common carrier,” and “common carrier by motor vehicle” convey the opposite position that the provision of transportation service can be offered indirectly and independent of actual ownership of a vehicle. 66 Pa. C.S. § 102.

As we discussed in the *July 2014 ETA Order*, our Regulations delineate various types of motor common carrier passenger service, which include scheduled route service, call or demand service, group and party service, limousine service, airport transfer service, and paratransit service. 52 Pa. Code §§ 29.301-29.356. Each of these types of passenger service has unique characteristics that define the particular transportation mode. However, not all types of common carrier transportation fit squarely within these specified categories, as we recognized when we promulgated these Regulations. Therefore, in order to accommodate a proposed transportation methodology not encompassed within the stated categories, our Regulations also provide for “experimental service” under 52 Pa. Code § 29.352.

Here, the ALJs correctly concluded that it is appropriate to consider the proposed transportation under the experimental service Regulation, rather than as a broker of transportation under 66 Pa. C.S. § 2505(a), which precludes a broker from using uncertificated motor carriers.[[9]](#footnote-9) Clearly, the Applicant is proposing to use private individuals in their personal vehicles rather than certificated motor carriers. We agree with the ALJs that the innovative nature of this proposed service – the use of so-called non-professional drivers in their private vehicles – requires an evaluation under Section 29.352 of our Regulations and a determination of whether this service can be provided in a safe manner. As the ALJs aptly explained, this Regulation gives the Commission the flexibility to consider a new type of motor carrier service on a trial basis to determine if the proposed service is beneficial to the public.

We find no error in the ALJs’ disposition of this issue and shall deny the Joint Protestants’ Exceptions.

## C. Evidentiary Criteria for Motor Carrier Applications - Statement of Policy - 52 Pa. Code § 41.14

### Public Demand or Need (52 Pa. Code § 41.14(a))

#### Application

Lyft contacted passengers who had used Lyft’s service. Lyft submitted thirty-one verified statements in support of its Application from passengers who stated that they used Lyft in the past and intended to use Lyft’s transportation service in the future for various purposes. Lyft Exh. 2; Tr. at 277, 280, and 284.

#### Recommended Decision

The ALJs stated the Applicant contacted passengers who had used the Lyft service and obtained several verified statements from passengers that they had used Lyft for transportation and that they intended to use the service in the future. The ALJs noted that the majority of the statements were related to Allegheny County, one statement related to Philadelphia, one statement related to State College, and one statement related to service in both Allegheny and Butler Counties. The ALJs determined that these statements were not sufficiently representative of the regions outside of Western Pennsylvania to demonstrate a need for the service across the state. R.D. at 28.

#### Exceptions

Lyft asserts that the ALJs erred in failing to appropriately consider the evidence of public need for Lyft’s platform across Pennsylvania. Lyft’s Exc. at 7. The Applicant avers that it has demonstrated a public demand and need for the proposed service throughout Pennsylvania. Lyft indicates that it offered thirty-one verified statements from members of the public. Lyft states that the public comments establish that Lyft’s proposed service is needed to support everyday activities, including grocery shopping, visiting friends and family, and obtaining safe transportation to and from night-time entertainment venues. Lyft’s Exc. at 7; Lyft’s Brief at 17; Lyft Exh. 2.

In support of its Application, Lyft states that it presented the testimony of the following witnesses:

* Dylan Ahrens, an Allegheny County resident who needs the proposed service two to three times a week for trips to the East end of Pittsburgh.
* Maria Brown, an Allegheny/Butler County resident who needs the proposed service for reliable transportation service.
* Sean Cochrane, an Allegheny County resident who needs the proposed service for his daily work commute and weekend late night outings.
* Julie Cook, an Allegheny County resident who needs the proposed service for late night to avoid driving while under the influence.
* Rachel Edman, an Allegheny County resident who needs the proposed service for safe travel and easy transportation, even when she is not carrying money.
* Steven Folwer, an Allegheny County resident who needs the proposed service as a vision impaired individual that cannot drive and cannot carry large grocery bags using public transportation.
* Susan Seymour, a Centre County resident who needs the proposed service for everyday transportation in State College due to lack of available transportation resources.
* Diane Torbich, an Allegheny County resident who needs the proposed service to travel to doctor’s appointments and the grocery store.

* Emily Winn, an Allegheny County resident who needs the proposed service for late night travel in Lawrenceville, East Liberty, and Shadyside neighborhoods.

Lyft’s Exc. at 7-8; Lyft’s Brief at 18-19; Lyft Exh. 2.

Lyft avers that, although much of the evidentiary support for its proposed service comes from individuals in or around Allegheny County, statewide authorization is appropriate under the circumstances. Lyft indicates that, since the proposed service is experimental and lacking in most areas in Pennsylvania except for Allegheny County, there is no question that expanding the service across Pennsylvania would benefit the public. Lyft states that the comments in its Exhibit 2 that reflect specific deficiencies in existing service in Allegheny County also reflect unmet needs in communities across Pennsylvania, such as obtaining safe transportation during late night hours. Lyft’s Exc. at 8. Lyft opines that the limited scope and two-year time frame of the requested authority and the unique characteristics of TNC service support approval of statewide operating authority. Lyft submits that, unlike traditional motor carrier services, the platform proposed by Lyft can be launched throughout the state without adding additional vehicles to Pennsylvania roadways. *Id*. at 9.

Lyft states that the Commission has recognized the growing irrelevance of territorial restrictions in competitive transportation industries, as demonstrated in the Commission’s recent *Final Rulemaking Amending 52 Pa. Code Chapters 3, 5, 23, 31, 32, and 41: Household Goods in Use Carriers and Property Carriers*, Docket No. L-2013-2376902 (Final Rulemaking Order entered June 19, 2014). Lyft believes that the growing TNC industry is similarly competitive, and, as such, it is unnecessary for the Commission to apply territorial restrictions to TNC carriers operating in its jurisdiction. Lyft’s Exc. at 9-10.

The Joint Protestants assert that Lyft did not meet its burden of proof regarding a statewide need for the proposed service. The Joint Protestants state that, because traditional motor carriers use many of the same technological innovations that Lyft proposes to use, the evidence does not show that Lyft is so unique and innovative as to mandate a conclusion of public need in Lyft’s favor. They indicate that Lyft did not provide any live public need testimony to support its Application. Joint Protestants’ Brief at 4. The Joint Protestants also indicate that the evidence Lyft submitted did not comply with the Commission’s rules regarding request evidence. *Id*. at 5.

In its Replies to Exceptions, JB Taxi argues that the Commission should reject Lyft’s contention that its business model justifies a departure from the Commission’s requirements concerning public need. JB Taxi avers that the Applicant presented evidence that reflected few, if any, mentions of need on a county-wide basis for any county in Pennsylvania, and has not developed a public need for a substantial portion of Pennsylvania. JB Taxi also avers that the witness statements presented by Lyft do not show an understanding on the part of the customer of the waivers, disclaimers, and the general release anticipated by Lyft. JB Taxi’s R. Exc. at 5.

#### Disposition

Upon review of the record, we conclude that the Applicant has met its burden of showing that the proposed service would fulfill some useful public purpose and be responsive to public need and demand.

In *Blue Bird*, *supra*, the Commission clarified the type of evidence an applicant may present to satisfy its burden of proof under Section 41.14(a), stating, in pertinent part, that:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant’s proposed service will satisfy the supporting witnesses’ asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that “approval of the application will serve a useful public purpose, responsive to a public demand or need.”

*Id.* at 272. An applicant is not required to establish a public demand or need for the proposed transportation in each and every point within the proposed service territory. Rather, it is sufficient if an Applicant establishes a cross section of public demand or need for the proposed service in the proposed service territory. *Morgan Drive Away, Inc. v. Pa. PUC*, 512 A.2d 1359 (Pa. Cmwlth. 1986); and *Purolator Courier Corp. v. Pa. PUC*, 414 A.2d 450 (Pa. Cmwlth. 1980).

The number of witnesses which comprise a cross section of the public on the issue of public demand or need for an Applicant’s proposed service will necessarily vary with the circumstances of the case, such as the scope of the requested operating authority and the population density in the intended operating territory. *Blue Bird* at 274. Where the applicant seeks a narrow grant of operating authority, fewer witnesses are required to show a cross section of the public needing the applicant’s proposed transportation in the intended operating territory. *Id*. at 275.[[10]](#footnote-10) Moreover, in the context of an application for experimental service, the Commission may exercise additional discretion in regard to market entry for a proposed service that is new and innovative.

Although much of the witness support was for Allegheny County, Lyft also provided witness support for Centre County. We do not find this unusual, as Lyft is proposing to provide a new and innovative service that many individuals may not be familiar with, except those in Allegheny County where Lyft has been providing service. Given the nature of Lyft’s proposed service and our discretion regarding market entry for experimental service providers, we conclude that the Applicant has provided a sufficient cross section of witness testimony relevant to public need and demand throughout Pennsylvania. Additionally, because of the unique nature of the proposed experimental service, we do not believe that the Applicant is required to present a large evidentiary showing of need in this case. The fact that the experimental certificate is valid for only two years will give the Applicant an opportunity to establish market demand for the new service. Moreover, the Applicant’s evidence supports its contention that a substantial benefit will be derived from the initiation of its competitive service. We agree with Lyft that, because the proposed service is experimental and lacking in most areas in Pennsylvania, expanding the service across Pennsylvania would benefit the public. We also agree that it is likely that the individual needs for the service reflected in the Statements in Support may be representative of needs in communities across Pennsylvania, such as obtaining safe transportation during late night hours.

Moreover, in response to the Joint Protestants’ arguments, it was not necessary for Lyft to provide live witness testimony, as the Commission routinely accepts written verified statements in support of public need, without requiring testimony from a witness. Nor does the Commission require requests for the proposed service to find a showing of public need. *See*, *Application of AAA Alpine Taxicab Co., LLC*, Docket No. A-00121832 (Order entered November 28, 2006) at 5.

### Evidence of Fitness – Driver Integrity

**(52 Pa. Code § 41.14(b)(4) & (b)(6))**

#### Application

Lyft states that it will be responsible for ensuring compliance with the Commission’s requirements. Lyft’s plan for complying with the Commission’s requirements set forth in 52 Pa. Code §§ 29.502-29.507, is described more fully below:

*Criminal Background Checks.* Applicant will conduct a national criminal background check for every driver and shall disqualify any person who has a criminal background check that indicates a conviction within the past seven years, of driving under the influence of drugs or alcohol, or fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage and/or theft, acts of violence, or acts of terror.

*Driving History Record.* Applicant will obtain a driver history for Pennsylvania for the preceding three years and will disqualify any person who has a driver history that indicates: (1) more than three moving violations in the three-year period preceding such check; or (2) a major violation in the three-year period preceding such check, including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license.

*Drugs or Alcohol.* Applicant has a zero tolerance policy on the use of drugs or alcohol while a driver is providing service using its platform. Notice of this zero tolerance policy is on the Applicant’s website, along with procedures to report a complaint about a driver the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The Applicant immediately suspends a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, and such suspension will last the duration of the Applicant’s investigation.

*Other Driver Requirements.* Operators must possess a current, valid driver’s license, proof of registration, proof of motor vehicle insurance and be at least 21 years of age.

Application, Attachment A at 4-5.

#### Recommended Decision

The ALJs found that the Applicant failed to demonstrate that it has a plan or even a commitment to accept responsibility for its role in ensuring driver integrity. The ALJs noted that, although Lyft appears to engage in thorough background checks of drivers regarding criminal history and driving history, it does not have a plan in place to monitor the drivers on an ongoing basis. R.D. at 27.

#### Exceptions

In its Exceptions, Lyft states that the ALJs erred by finding that its Application set forth insufficient plans to monitor driver safety. Lyft’s Exc. at 24. Lyft points out that it conducts no less than four separate driver background checks, including a county records criminal background check, a federal criminal background check, a federal sex-offender database check, and a driving record check. *Id*. at 25 (citing Lyft’s Brief at 21-22; Tr. at 268-270). Lyft indicates that it trains employees and mentors to conduct driving instruction exercises called “ride alongs” with new drivers as part of the registration process. Lyft’s Exc. at 25 (citing Tr. at 335). Lyft explains that its mentors are experienced Lyft drivers with impeccable driver safety and customer service records. Lyft’s Exc. at 25 (citing Tr. at 293, 357). According to Lyft, it uses innovative communications technology to obtain “real-time” vehicle safety feedback from passengers through its rating system. Lyft’s Exc. at 26 (citing Tr. at 271, 359). Lyft also indicates that it employs a strict zero-tolerance policy regarding the use of drugs or alcohol when drivers are offering rides through its platform. Lyft’s Exc. at 26 (citing Exh. 1A, Redline at 5). Lyft avers that this policy is both a remedy, by immediately removing drivers in violation from activity, and a deterrent to prevent future infractions. Lyft’s Exc. at 27 (citing Tr. at 270-271). Lyft believes that its measures are particularly appropriate when viewed in the context of the impacts of the TNC model. Lyft’s Exc. at 27.

#### d. Disposition

Upon review, we acknowledge that Lyft’s proposed criminal background check requirements appear to exceed the Commission’s regulatory requirements. The Applicant’s seven-year look-back period using both national and county-level databases is more stringent than the twelve-month criminal look back period under 52 Pa. Code

§ 29.505(a). Tr. at 268-270. Lyft also submits that it will automatically disqualify an individual who has been convicted of driving under the influence of drugs or alcohol, or fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage and/or theft, acts of violence, or acts of terror. In contrast, 52 Pa. Code § 29.505(c) contains no automatic disqualification for violent crimes or sexual offenses. Rather, Section 29.505(c) only prohibits the employment of a driver if the prior conviction adversely affects the individual’s suitability to provide service. Furthermore, Lyft’s driver history policy complies with the three-year review period in Section 29.504 and, additionally, includes an automatic disqualification for major violations, including reckless driving, driving under the influence, or hit and run, which is not included in Section 29.504.

On the face of the proposal, however, there is no requirement that the Applicant conduct follow-up criminal and driver history record checks. Additionally, although 52 Pa. Code §§ 29.504(b) and 29.505(b) require carriers to conduct annual driver history checks every twelve months and criminal background checks every two years, it is unclear how Lyft intends to comply with the regulatory requirement for follow-up background checks.

Based on these deficiencies, we shall require Lyft to submit a Compliance Plan as a condition of the approval of the Application. Lyft shall continue to undertake driver background checks of the scope and breadth described in its testimony and consistent with 52 Pa. Code §§ 29.503 and 29.505, both at the time of the driver sign-up and annually thereafter. Lyft shall maintain verifiable records of this information for two years. Lyft shall also undertake drivers’ history checks, consistent with 52 Pa. Code

§ 29.504, both at the time of the driver sign-up and annually thereafter. Lyft shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Lyft shall maintain verifiable records of this information for three years. The Compliance Plan must also identify the employee responsible for complying with this requirement and other applicable Commission Regulations.

Accordingly, given the experimental nature of the service, we shall grant the Applicant’s Exceptions regarding its plan to ensure driver integrity and reverse the ALJs’ findings as to the driver integrity factor. Further, we shall order the filing of a Compliance Plan which ensures annual criminal and driver record checks, consistent with this Opinion and Order.

### Evidence of Fitness – Vehicle Safety (52 Pa. Code § 41.14(b)(2))

#### Original and Amended Application

*Inspections.* Lyft indicates that it will require vehicles used in conjunction with its platform to pass annual safety inspections in compliance with Pennsylvania vehicle laws and regulations at 75 Pa. C.S. Chapter 47 and 67 Pa. Code §§ 175.61­ - 175.80, which is consistent with the Commission’s requirements at 52 Pa. Code §§ 29.402 and 29.405. Additionally, Lyft acknowledges that vehicles are subject to inspection by Commission enforcement officers. Lyft will also require that each vehicle used to provide transportation through its platform undergo a nineteen-point safety inspection conducted by Lyft. The inspection will review safety standards and specifically address the following vehicle components: (1) foot brakes;   
(2) emergency brakes; (3) steering mechanism;   
(4) windshield; (5) rear window and other glass;   
(6) windshield wipers; (7) headlights; (8) tail lights;   
(9) turn indicator lights; (10) stop lights; front seat adjustment mechanism; (11) door function; (12) horn;   
(13) speedometer; (14) bumpers; (15) muffler and exhaust system; (16) condition of tires, including tread depth;   
(17) interior and exterior rear view mirrors; and (18) safety belts for driver and passenger(s).

*Vehicle Type.* Eligible vehicles include street-legal coupes, sedans, or light duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles and pickup trucks.

Application, Attachment A at 5-6; Lyft Exh. 1-A; Attachment A at 6-7.

**b. Recommended Decision**

The ALJs found that Lyft did not have an appropriate plan to comply with the Commission’s vehicle safety Regulations. R.D. at 26. The ALJs observed that, although a vehicle used in the Applicant’s service must have its Pennsylvania Department of Transportation (PennDOT) vehicle registration and inspection up to date, and a Lyft employee or mentor will check some vehicle features, there is no mechanical inspection at the time the vehicle is put into service, nor is there a plan in place to ensure that the vehicle stays in a safe mechanical condition. The ALJs also noted that neither the Lyft employees nor the Lyft mentors who are responsible for inspecting vehicles are mechanics. *Id*. at 27.

#### c. Exceptions

In its Exceptions, Lyft avers that the ALJs inappropriately compared its safety plan to the operations of taxicab companies without considering the critical differences between taxicab operations and Lyft’s platform. Lyft states that its platform necessitates regulations designed to protect the public safety without diminishing Lyft’s ability to meet transportation needs by incentivizing non-professional drivers to offer their personal vehicles to transport passengers. Lyft’s Exc. at 24. Lyft asserts that the ALJs erroneously concluded that common carriers under the Commission’s jurisdiction are required to schedule mechanical inspections in addition to the annual PennDOT inspection. Lyft indicates that the Commission’s Regulations only require that a common carrier ensures that its vehicles obtain state annual inspections and submit to additional inspections from the Commission’s enforcement staff. *Id*. (citing 52 Pa. Code §§ 29.405-406). According to Lyft, because the Commission’s Regulations do not contain such a requirement, the ALJs’ finding that Lyft was required to conduct annual inspections was made in error. Lyft’s Exc. at 25.

Lyft argues that the ALJs erred in failing to consider the efficacy of Lyft’s multi-part safety plan. Lyft explains that each vehicle operated in connection with its service maintains its PennDOT vehicle registration and inspection. *Id*. Lyft also explains that it trains employees and mentors to conduct nineteen-point inspections of vehicles, which include checks of foot brakes, emergency brakes, steering, headlights, tail lights, tire tread, seatbelts, and other safety components. *Id*. at 25-26. Lyft indicates that these vehicles will also be subject to inspection by the Commission’s enforcement staff. *Id*. at 26. Lyft believes that its safety measures are appropriate when viewed in the context of the service it proposes to provide, because requiring drivers to report to a centralized garage and undergo daily inspections would discourage individuals from registering as drivers and eliminate the availability of efficient rides for potential passengers. Lyft objects to the Commission applying overly restrictive age and mileage limits to its proposed service, because Lyft is of the opinion that such restrictions would limit the available pool of drivers in lower-income communities and are unnecessary when the vehicles are primarily used for personal use and are used in connection with Lyft’s platform for less than fifteen hours per week. *Id*. at 28.

In reply, the Joint Protestants state that Lyft’s proposed inspection regime for vehicles is inadequate to protect public safety and does not reflect the standard of care owed to the public under the Commission’s Regulations. Joint Protestants’ R. Exc. at 6.

In its Replies to Exceptions, JB Taxi avers that the Commission should reject Lyft’s position that non-professional drivers and their personal vehicles that are used to provide public utility service are exempt from the inspection, maintenance, and repair responsibilities that regulated common carriers must satisfy. JB Taxi argues that the Applicant’s safety plan ignores the risks present in the Applicant’s proposal, which is to operate largely without supervision. JB Taxi’s Exc. at 6. JB Taxi opines that using non-professional drivers who may be unfamiliar with mechanical wear and tear makes the need for monitoring, inspection, and periodic maintenance even greater. *Id*. at 6-7.

#### d. Disposition

Upon review, we shall grant Lyft’s Exceptions, in part, and deny them, in part. Lyft has set forth a base-level framework for vehicle safety that includes annual PennDOT inspections, inspections by Commission enforcement officers, and customer feedback. Thus, we shall grant the Exceptions pertaining to the finding that the Applicant failed to demonstrate that it has a plan or a commitment to accept responsibility for its role in ensuring vehicle safety. *See*, R.D. at 27. Nevertheless, we believe that additional standards consistent with the *July 2014 ETA Order* are required to bolster public safety.

Accordingly, we shall require conditions for operation in addition to those set forth in the Application. Specifically, Lyft shall ensure that drivers’ vehicles successfully pass PennDOT inspection pursuant to 52 Pa. Code § 29.405 annually, and Lyft shall maintain verifiable records thereof for three years. Lyft shall additionally ensure that drivers’ vehicles remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402(1) and (2) and 29.403. Consistent with the Commission’s Regulations, vehicles shall be subject to periodic inspection as set forth in 52 Pa. Code §§ 29.406 and 29.407. Lyft shall maintain verifiable records thereof for three years.

Furthermore, we will require that none of the drivers’ vehicles used for the experimental service may be more than eight years old, consistent with the Commission’s Regulations at 52 Pa. Code § 29.314(d).[[11]](#footnote-11) Lyft shall maintain verifiable records thereof for three years. The experimental service proposed by the Applicant would not encompass additional vehicle safety inspection standards imposed on other motor carriers. As such, it is critical to establish other baseline safety and reliability precautions, such as vehicle age for this experimental service.

Furthermore, in order to facilitate random and routine inspections, we will require that vehicles used in the Applicant’s proposed service, while operating in Stages 1, 2, or 3, as described in greater detail herein, be properly marked in compliance with Sections 29.71 and 29.72 of our Regulations, 52 Pa. Code §§ 29.71 and 29.72. As noted in the *July 2014 ETA Order*, these markings are critical for our enforcement staff to visually identify the vehicles used in the public service. The use of placards or other distinguishable markings on the outside of the vehicle are acceptable.

We also note that the Commission’s current Regulations require that “vehicles be owned or leased by the certificate holder.” 52 Pa. Code § 29.101(a)(5). However, under the experimental service proposed by Lyft, it will neither own nor lease the vehicles used in the service. Although, historically, the Commission has disallowed this structure to prevent abuses and to ensure accountability, we believe that in this instance, there is sufficient reason to waive this regulatory requirement. Notwithstanding Lyft’s lack of ownership or lease interest, Lyft is required to ensure that the vehicles operated in this service comply with the Commission’s vehicle safety and insurance requirements, as explained above. We believe that by waiving the vehicle ownership/lease requirement, the Commission is able to make room for a new and innovative service, while still ensuring the safety of the passengers using this service.[[12]](#footnote-12)

### Evidence of Fitness – Employees (52 Pa. Code § 41.14(b)(2))

#### Standard

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission will evaluate “[w]hether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.” 52 Pa. Code § 41.14(b)(2).

#### Positions of the Parties

Lyft acknowledged that Mr. Okpaku[[13]](#footnote-13) was unfamiliar with certain local regulatory requirements. However, Lyft indicated that, as Mr. Okpaku referenced, Lyft maintains a variety of in-house expertise, including legal, operations, and engineering departments who would monitor the applicable Pennsylvania Regulations. Lyft’s Brief at 27 n. 12.

The Joint Protestants averred that the Applicant failed to present testimony regarding the experience or qualifications of any of its employees concerning their technical fitness. The Joint Protestants also averred that the Applicant does not have any employees or offices in Pennsylvania. Joint Protestants’ Brief at 28.

#### Recommended Decision

The ALJs found that the Applicant failed to provide any evidence regarding the technical expertise of any people who will be working on behalf of the Applicant. The ALJs observed that Mr. Okpaku did not identify any individuals who specialize in the Applicant’s Pennsylvania operations. The ALJs stated that, although there is a central staff in California who monitors passenger feedback in case a driver needs to be removed from the platform, the Applicant does not maintain a local office or presence and no employee or real mechanism was identified to govern the conduct of drivers. The ALJs also stated that, while Mr. Okpaku was knowledgeable in many areas, he did not appear to be familiar with important regulatory requirements for motor carriers in Pennsylvania, nor was such oversight included in his job responsibilities. R.D. at 27.

#### Exceptions

Lyft does not address this specific issue in its Exceptions.

#### Disposition

As part of the Compliance Plan required by this Order, we will require the Applicant to submit information regarding the identities and job descriptions of its employees, including the office locations of its employees, who are expected to provide services during the two-year certification period for the experimental service*.*

### Insurance (52 Pa. Code § 41.14(b)(3))

#### Original and Amended Application

Lyft indicates that any driver providing transportation using its platform must provide proof of current personal liability insurance coverage in at least the amount specified in 75 Pa. C.S. §§ 1702 and 1711. Application, Attachment A at 3.

Lyft originally proposed to meet the Commission’s insurance requirements with an excess liability policy providing drop-down coverage in the event that a driver using Lyft’s platform experienced an accident and the driver’s personal policy denied coverage. Lyft’s Exh. 1-A, Redline at 2, 4. Lyft has since changed its proposal in a manner that it avers satisfies the Commission’s insurance requirements. Lyft summarizes its proposed compliance with the insurance requirements in 52 Pa. Code   
§§ 32.11 and 41.21 as follows:

i. *$1 million of liability coverage per incident*. Lyft maintains liability insurance, primary to a driver’s personal auto insurance and excess to any commercial insurance carried by a driver, in the amount of $1 million to cover a driver’s liability for bodily injury, death or property damage, which far exceeds the Commission’s minimum requirement of $35,000. The terms and conditions for this policy provide that this coverage will apply from the time a driver accepts a trip request through the App until the completion of a trip. This coverage additionally includes first party medical benefits in the amount of $25,000 and first party wage loss benefits in the amount of $10,000 for passengers and pedestrians. This policy protects drivers and passengers using Lyft’s platform and third parties when injured through an accident caused by the driver using Lyft. This policy also includes uninsured/underinsured motorist coverage of $1 million per incident, which will apply if another motorist causes an accident with a driver’s vehicle and does not carry adequate insurance.

ii*. Contingent liability coverage between trips.* For circumstances where a driver using Lyft’s platform is available on the Lyft platform, but between trips with passengers (prior to being matched), and the driver’s personal policy is unavailable or declines coverage during such time, Lyft has procured a policy that covers liability up to $50,000 per person for bodily injury, $100,000 per accident, and $25,000 for property damage.

iii. *Contingent comprehensive/collision coverage.* Finally, for drivers carrying comprehensive and/or collision coverage on their personal policies, Lyft offers contingent comprehensive and/or collision coverage up to $50,000 per occurrence with a $2,500 deductible. The terms and conditions for this policy provide that this coverage will apply from the time a driver accepts a trip request through the App until the completion of a trip.

Lyft’s Exh.1-A, Attachment A at 4.

Mr. Okpaku developed these insurance policies with Lyft’s insurer, James River Insurance Company (James River). Lyft indicates that if the Commission approves the Application, it will request a Form E from James River in the standard form or as modified by the Commission. Lyft’s Brief at 33.

During the hearing, Mr. Okpaku presented testimony regarding the three different stages of Lyft’s service and how insurance coverage applies during each stage. For purposes of insurance coverage, there are three periods of a Lyft ride:

Stage 1: Driver opens the App but has not yet accepted a ride.

Stage 2: Driver receives and accepts a ride request but has not yet picked up the passenger.

Stage 3: Driver picks up the passenger, drives the passenger to the destination, and the passenger exits the car.

Tr. at 261-262.[[14]](#footnote-14) According to Mr. Okpaku, Lyft intends for its insurance policy to be primary for Stages 2 and 3 with liability coverage up to $1 million. Tr. at 262-63. Lyft also intends its policy to include $25,000 of personal injury coverage and $10,000 in wage loss coverage. Tr. at 263. The Applicant intends its policy to be contingent in Stage 1, and includes coverage of $50,000 per person; $100,000 per incident; and $25,000 of property damage coverage if the driver’s personal insurance carrier declines coverage. Tr. at 265. The Applicant proposes to provide contingent comprehensive and collision coverage up to $50,000, with a $2,500 deductible for both the Stage 1 policy and the Stage 2 and 3 policies. Tr. at 267.

#### Recommended Decision

The ALJs found that the Applicant failed to demonstrate that the insurance policy which it holds or intends to obtain in connection with the proposed service will, with any degree of certainty, provide continuous coverage of the vehicles used in the operation. Instead, the ALJs found that the evidence shows that there are significant uncertainties about the quality of the Applicant’s proposed policy which, at the very least, would result in delays in meeting any claims made by either a passenger or a driver. The ALJs stated that it is unclear that either drivers or passengers have sufficient information to make a knowing judgment about their coverage for any injuries which may result or their exposure to the claims of others. R.D. at 22.

The ALJs observed that the Applicant’s proposed coverage during Stage 1 does not comply with 52 Pa. Code § 32.11,[[15]](#footnote-15) because the Applicant is proposing only “contingent” coverage without the first party benefits required by the Regulation. The ALJs stated that the Regulation does not contemplate anything other than primary coverage. The ALJs concluded that, because Lyft’s business model includes incentives for drivers to make themselves available for transportation services during peak demand times, there is no reason for Stage 1 to be insured differently than other periods of the ride. R.D. at 23.

The ALJs observed that the Applicant does not propose any independent or ongoing verification of its drivers’ personal insurance policies beyond requesting a copy of each driver’s financial responsibility card or declarations page at the outset and on the renewal date of the policy listed on such card. R.D. at 24 (citing Tr. at 360-361; 409-410). The ALJs also noted that the Applicant does not propose to examine its drivers’ personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those polices may be subject to termination or new rates if their insureds become Lyft drivers. R.D. at 24 (citing Tr. 373-374). The ALJs stated that individuals who become drivers for Lyft face potential changes in their personal auto insurance, including cancellation or a rate increase, and may also incur personal financial liability resulting in gaps in the coverage proposed by the Applicant, when considering the personal insurance coverage the driver may have and any livery exclusions. R.D. at 24 (citing Tr. at 374, 393-397, 401-402).

The ALJs also stated that a person becoming a driver for the Applicant faces possible personal financial responsibility as a result of terms and conditions Lyft imposes on its drivers in its agreements with them. The ALJs noted that Lyft’s agreements with its drivers and passengers have a variety of disclaimers and exclusions that may negate the coverage Applicant purports to provide. R.D. at 24. The ALJs noted the following terms:

Lyft… has no responsibility or liability for any transportation services voluntarily provided to any rider by any driver using the Lyft platform.

Such Driver has a valid policy of liability insurance (in coverage amounts consistent with all applicable legal requirements) for the operation of such Driver’s vehicle to cover any anticipated losses related to such driver’s provision of rides to Riders.

Such Driver will be solely responsible for any and all liability which results from or is alleged as a result of the operation of the vehicle the Driver uses to transport Riders, including, but not limited to personal injuries, death and property damages.

Lyft has no responsibility whatsoever for the actions or conduct of drivers or riders. Lyft has no obligation to intervene in or be involved in any way in disputes that may arise between drivers, riders, or third parties…. Drivers and riders use the services at their own risk.

*Id*. at 24-25 (citing JB Taxi Exh. 2 at 9, 13, and 21). The ALJs observed that Lyft never explained the impact of such separate agreements with its drivers and passengers on its insurance coverage, but instead, provided a conclusion, without any support, that the agreements and disclaimers of liability would not affect the Applicant’s liability, despite the fact that Applicant’s agreements suggest just the opposite. R.D. at 25.

The ALJs found that Lyft did not present evidence that the training program for its drivers would educate them about the three stages of insurance and the three insurance policies, the differences in the stages and the insurance among them. Specifically, the ALJs explained that Lyft did not demonstrate how it will educate its drivers, in a uniform and standard way, regarding their personal liability exposure under its agreements with them or that may result from its proposed insurance. Nor did it explain how to access the Applicant’s proposed three stages of insurance, or to inform passengers or third parties of the insurance process in the event of an accident or claim. R.D. at 25 (citing Tr. at 464-466). The ALJs also explained that, in contrast to standard underwriting and claims handling practices in the insurance industry, the Applicant does not inform its insurer about its drivers or their records, and its insurer is not the initial contact on claims. R.D. at 25 (citing Tr. at 461-463, 468-469, and 479-482).

Further, the ALJs rejected the Applicant’s position that the Form E filing required by the Commission would cure any problems existing with the terms set forth in the Applicant’s proposed agreements and insurance policies. The ALJs concluded that the evidence demonstrated that the Applicant failed to propose adequate insurance, education, and training for its drivers, its passengers and the general public, and it left unanswered several crucial insurance-related issues. R.D. at 26.

#### Exceptions

Lyft excepts to the ALJs’ determination that its proposed insurance coverage for Stage 1 is inconsistent with Section 32.11 of the Commission’s Regulations, 52 Pa. Code § 32.11. Lyft avers that regulated common carrier activity does not occur during Stage 1. Lyft’s Exc. at 10. Lyft indicates that its witness offered testimony to illustrate that Stage 1 is inherently different from Stages 2 through 3 because, in Stage 1, no ride activity is taking place and there has not even been a request for a ride. *Id*. at 12 (citing Tr. at 261-262, 265). Contrary to the ALJs’ conclusion, Lyft avers that it does not create an incentive for its drivers to turn on their app and head out onto the road in search of rides. Lyft explains that its platform eliminates such an incentive, because the driver can only accept ride requests received through the platform and cannot solicit rides as a taxicab driver could. Lyft’s Exc. at 12. Lyft also opines that, since the vehicles used by drivers in connection with its platform are not engaged in authorized service during Stage 1, Section 32.11 does not require primary insurance coverage for Stage 1. *Id*. at 15. Lyft asserts that the coverage limits in its contingent policy exceed the coverage limits set forth in Section 32.11. *Id*. at 16.

Additionally, Lyft contends that the ALJs erred by imputing unreasonable and unfounded insurance requirements on Lyft, because the ALJs placed several additional duties on Lyft without establishing a legal basis for these duties. For example, Lyft avers that the Commission’s Regulations do not require a regulated common carrier to ensure that its drivers maintain valid personal auto insurance policies. *Id*. at 17. Lyft indicates that nothing short of daily calls to PennDOT and the insurance carrier would guarantee that this requirement was met. *Id*. at 18. Lyft states that, because it now offers primary auto liability insurance, the drivers’ personal auto insurance policy is irrelevant to any claims process concerning accidents resulting from the operation of a vehicle in connection with Lyft’s platform. Lyft asserts that its proposal to check each drivers’ insurance during the initial on-boarding process and during each scheduled renewal of the policy is sufficient to provide confirmation that each driver has a valid personal auto insurance policy. *Id*. at 19. Lyft believes that the insurance contract between a driver and a personal auto insurer is outside the scope of the Commission’s authority. *Id*. at 20.

Lyft disagrees with the ALJs’ findings that there are gaps in its insurance coverage. Lyft states that the only remaining gap identified in the Recommended Decision involves an allegation that Lyft failed to provide coverage in a situation where coverage would be provided by a taxicab operator. *Id*. Lyft notes that the Recommended Decision states that “it does not appear that the policy would provide coverage when a driver has discharged a passenger and is returning from that ride.” *Id*. at 21 (quoting R.D. at 8). Lyft avers that the ALJs’ finding is another unfounded attempt to draw parallels between Lyft’s proposed service and traditional taxicab service. Lyft indicates that, unlike taxicab drivers, the drivers using Lyft’s platform are not under an obligation to return to a central dispatch point and, therefore, insurance coverage is not necessary under such circumstances. Lyft further objects to the ALJs’ findings regarding the risk assessment process conducted by Lyft’s insurer. Lyft’s Exc. at 21. Lyft cites to Finding of Fact No. 40, which provides “[i]nformation about drivers, their accident histories and the vehicles is an important aspect to properly gauging risk exposure for an insurance company.” *Id*. at 22 (quoting R.D. at 10). Lyft claims that concerns about the valuation methodologies used by its insurance company to evaluate the risk of insuring Lyft’s proposed operations are speculative and beyond the scope of the Commission’s authority to ensure that Lyft has obtained adequate insurance coverage under Section 32.11 of the Commission’s Regulations. Lyft’s Exc. at 22.

Finally, Lyft avers that the ALJs failed to properly weigh Lyft’s explanation of the relationship between the contractual terms and conditions applicable to all jurisdictions and the Applicant’s regulatory obligations in Pennsylvania. Lyft contends that its customary disclaimers do not mean that it has no liability to cover certain claims. *Id*. Lyft notes that its witness explained that the Terms and Conditions are intended to generally protect Lyft from direct liability, but with regard to Pennsylvania operations, Lyft and users of Lyft’s platform remain subject to the applicable Order and Regulations of the Commission. *Id*. at 22-23. Lyft offers to modify its Terms and Conditions to alleviate any Commission concerns to contain the following language: “Nothing herein shall be construed to modify Lyft’s insurance obligations under the laws and regulations of the Pennsylvania Public Utility Commission.” *Id*. at 23.

In its Replies to Exceptions, the Insurance Federation argues that the ALJs correctly found that Lyft should provide primary coverage during all three stages. Insurance Federation’s Exc. at 3. The Insurance Federation believes that Lyft’s business plan is to get drivers on the road more often and during times of peak demand so they are available to pick up potential passengers. The Insurance Federation avers that insurers uniformly regard a driver “on app” as presenting a different risk exposure. The Insurance Federation indicates that insurers will not provide coverage under personal auto policies to drivers during Stage 1, as this is the type of situation that livery exclusions address. *Id*. at 4.

Additionally, the Insurance Federation avers that the ALJs correctly focused on the inadequacy of Lyft’s communications with its drivers concerning insurance issues. *Id*. at 6. The Insurance Federation asserts that Lyft should be informing its drivers of the possible insurance issues they could face, including termination and surcharges, as well as the need for the drivers to check their own coverage and possible ramifications. *Id*. at 7. The Insurance Federation also criticizes Lyft for the lack of instructions or communications it provides its drivers and passengers in the event of an accident or claim. The Insurance Federation questions Lyft’s proposed insurer, James River, a surplus lines insurer, for not wanting to know who it is insuring and possibly not having its own claims system. *Id*. at 8. Furthermore, the Insurance Federation states that the ALJs correctly noted the differences between Lyft’s insurance coverage and its contracts with its drivers. The Insurance Federation believes that Lyft has not proposed to explain to its drivers or passengers exactly what its insurance obligations are or how it will meet them, and its attempts to clarify any contradictions between its insurance coverage and its disclaimers and exclusions in its contracts only amount to more confusion. *Id*. at 9-10.

In response, the Joint Protestants state that all regulated motor carriers provide liability coverage that insures the service vehicles on a continuous basis; vehicles are covered twenty-four hours a day, seven days a week. They believe that Lyft should modify its business model to provide the same level of protection required by regulated motor carriers. Joint Protestants’ R. Exc. at 5. The Joint Protestants aver that it would be unwise for the Commission to approve a coverage scheme that will inevitably result in coverage disputes. The Joint Protestants opine that Lyft’s coverage is flawed because it is not clear, understandable, or reliable, and, as such, its Application should be denied on this basis. *Id*. at 6.

In its Replies, JB Taxi asserts that the Commission should reject Lyft’s claim that Phase 1 does not involve commercial activity. JB Taxi’s R. Exc. at 5. JB Taxi states that Lyft should be held to the same insurance standards, or greater insurance standards, as regulated motor carriers. JB Taxi avers that the ALJs correctly analyzed Lyft’s contract Terms and Conditions. JB Taxi contends that Lyft’s offer to change the Terms and Conditions should be cautiously regarded, because Lyft has not provided any assurances that it will make the changes or will continue to adhere to those changes in the future. *Id*. at 6.

#### Disposition

Upon review of the record, and given the experimental nature of the service, we agree with Lyft that it has provided sufficient evidence to show a commitment to maintaining insurance coverage in amounts that meet or exceed our regulatory requirements. However, we concur with the ALJs that Lyft’s proposed coverage during Stage 1 does not comply with 52 Pa. Code § 32.11, because Lyft is proposing only “contingent” coverage without the first party benefits required by the Regulation. We also concur that Lyft’s proposal related to notification and education of its drivers with respect to personal auto coverage is inadequate. Additionally, the absence of a requirement that drivers notify their personal auto insurers of their intent to operate in the Applicant’s service creates potential uncertainties or gaps in coverage. Accordingly, we shall grant the Applicant’s Exceptions, in part, deny them, in part, and impose additional requirements as a condition of approval of the Application consistent with this Opinion and Order.

Consistent with the *July 2014 ETA Order*, we will use the following terminology for reference purposes:

* Stage 0: Driver is driving for personal reasons and the App is closed.
* Stage 1: Driver opens the App and is logged on to the system.
* Stage 2: Driver receives and accepts a ride request and travels to pick up the passenger.
* Stage 3: Driver picks up the passenger, drives the passenger to the destination, and the passenger exits the vehicle.

In its Application, Lyft proposes to provide one level of insurance for Stage 1, and another level of insurance for Stages 2 and 3. Specifically, for Stage 1, Lyft proposes to provide contingent coverage (meaning coverage will apply if the driver’s insurance declines coverage) of $50,000 per individual for bodily injury, with a total of $100,000 per accident, and $25,000 for property damage. For Stages 2 and 3, Lyft proposes to provide $1 million in liability coverage per incident that will cover bodily injury, death, or property damage, as well as $25,000 in first party medical benefits, and $10,000 in first party wage loss benefits for passengers and pedestrians, as well as $1 million in uninsured/underinsured motorist coverage per incident.

The levels of insurance proposed by Lyft during Stages 1 through 3 exceed the minimum requirements for motor carriers in 52 Pa. Code § 32.11 and 41.21. The Commission will accept Lyft’s proposed insurance levels during Stages 2 and 3. As we will require Lyft to provide primary coverage, as opposed to contingent coverage, during Stage 1, Lyft shall comply with the minimum requirements for insurance coverage set forth in Section 32.11(b) of our Regulations. Prior to receiving authority from the Commission, Lyft shall meet several conditions, consistent with our *July 2014 ETA Order*. First, as a condition of authority, Lyft’s insurance during Stages 1 through 3 must be the primary insurance coverage, *regardless* of any insurance coverage held by Lyft’s drivers. In its Application, Lyft states that the insurance it will provide during Stage 1 is “contingent,” meaning it will only apply if the driver’s insurance policy declines or pays zero. However, because the driver is “on the clock” and working for Lyft during Stages 1 through 3, it is Lyft’s insurance, and not the driver’s insurance, that must be primary during all three of these stages.

Second, with respect to Stage 0, the Commission accepts Lyft’s proposal to require its drivers to provide proof of valid and current liability insurance, consistent with 75 Pa. C.S. §§ 1702 and 1711, during this period. However, with regard to driver insurance disclosure, we require Lyft to achieve more than it proposes. We are concerned that Lyft drivers may not understand that this commercial use of their personal vehicles could void their existing personal vehicle insurance, which would otherwise apply when their vehicle is not being used for transportation network service. Accordingly, we will require Lyft to direct all drivers, conspicuously in written or electronic form, to notify their insurer, *in writing*, of their intent to operate in Lyft’s service. As part of this notification, drivers shall verify that they agree to make such contact with their insurer within a specified time period. Such verification may be in written or electronic form and must include the driver’s signature in either electronic or written form. Lyft is required to maintain a copy of this notification for each driver during that driver’s affiliation with Lyft and for a period of three (3) years following termination of a driver’s service. Additionally, Lyft must notify drivers, *in writing*, of the levels of insurance coverage it is providing during all three Stages, including whether it is providing comprehensive and collision coverage. Lyft shall also notify drivers regarding the appropriate protocol to be followed in case of an accident. Lyft must maintain a copy of each notification, in written or electronic format, for a period of three (3) years following termination of a driver’s service.

In adopting this second requirement, we agree with the Insurance Federation that the notification serves a critical purpose for drivers and the public by ensuring that the driver’s services with Lyft do not result in circumstances of lapsed personal coverage and uninsured motorists on highways. Without such a notification procedure, a driver could potentially jeopardize his personal coverage, and possibly car loans or leases, if his insurer deems the service to be commercially-related. Additionally, the driver could be exposed to significant personal liability in the event of an accident or claim during the personal use of the vehicle. The time for verifying coverage limits should not be when a claim is made, but rather prior to the time that insurance coverage may be necessary. The notification provision, articulated above, is a measure to ensure such verification.

In our *October 2014 ETA Order*, at 5, we further explained the importance of the notice provision as follows:

Notwithstanding Lyft’s arguments, we believe that it is prudent and appropriate to continue the notification requirement established in our July 24, 2014 ETA Order. Contrary to Lyft’s allegations, we believe that this notice requirement provides a public safety and driver protection benefit. By Lyft’s own admission, it is on the cusp of facilitating major change in the transportation industry through the development and implementation of new and innovative technology. This development warrants transparency to all affected entities, including insurers of Lyft’s drivers. Transparency should not be sacrificed based on claims that a driver notification requirement is not convenient for transportation network operators.

Contrary to Lyft’s arguments, the notification requirement does not interject Lyft into the contractual relationship between the driver and the driver’s personal insurer. The notification requirement does not require Lyft to negotiate its driver’s personal policies, as Lyft would suggest, and does not interject Lyft into the driver/insurer relationship. Rather, the notice is intended to ensure that the driver has an understanding of any limitations regarding insurance coverage for an accident that occurs when a driver is not working for Lyft because the driver is using his vehicle.

Third, consistent with 52 Pa. Code § 32.11(a), Lyft may only operate if its insurance carrier provides acceptable evidence of insurance (a Form E Certificate of Insurance) to the Commission. *See, Insurance Corporation of New York v. Antrom*, 2008 Pa. Super. LEXIS 5616 (by filing the Form E certification, “the insurer certifies to the Commission that it is providing coverage in accordance with the law, notwithstanding any potentially contrary terms contained in an individual policy of insurance”). Moreover, we stress that it is Lyft, as the regulated utility, that must have acceptable evidence of insurance on file with the Commission. *Love-Diggs v. Tirath*, 911 A.2d 539 (Pa. Super. 2006); *Metro Transportation Co., et al. v. Pa. PUC*, *et al.*, 912 F.2d 672 (3rd Cir. 1990). Accordingly, Lyft shall file a Form E Certificate of Insurance affirming primary coverage for Stage 1 at coverage liability levels consistent with the Commission’s Regulations for motor carriers, plus $1 million coverage for Stages 2 and 3 as described in Lyft’s Amended Application and its testimony. *See*, Tr. at 262-263. In no event shall the levels of coverage in any Stage fall below the requirements in 52 Pa. Code § 32.11(b).[[16]](#footnote-16)

### Propensity to Operate Safely and Legally (52 Pa. Code § 41.14(b))

#### Standard

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission may evaluate “[a]n applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.” 52 Pa. Code § 41.14(b)(5).

#### Recommended Decision

The ALJs indicated that it is appropriate for the Commission to withhold authority to operate where the record demonstrates that the Applicant is not likely to comply with the Commission’s Regulations in the future, which impairs the Commission’s ability to protect public safety. The ALJs explained that the standard is “whether there is demonstrated a persistent disregard for, flouting or defiance of the Public Utility Code or Commission Orders.”[[17]](#footnote-17) The ALJs noted that the Applicant explained in great detail that it does not believe that the service it is proposing is transportation service subject to the Commission’s jurisdiction. The ALJs observed that Lyft launched its service in Allegheny County in the spring of 2014 and has operated continuously since then.

The ALJs pointed to I&E’s Complaint against Lyft at Docket No.   
C-2014-2422713[[18]](#footnote-18) and the Commission’s directive that Lyft cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until Lyft secured appropriate authority from the Commission. *See*, *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 entered July 24, 2014) (*Cease and Desist Order*). The ALJs also pointed to the *July 2014 ETA Order* which granted the Applicant emergency temporary authority to operate on July 24, 2014. The ALJs noted, however, that permission to operate was contingent on the Applicant complying with additional requirements that were imposed by the Commission. The ALJs observed that, although the Applicant was not granted its Certificate of Public Convenience pursuant to the *July 2014 ETA Order* until August 14, 2014, it continued to operate after it was directed to cease and desist. The ALJs stated that, while Lyft may disagree with the Commission’s conclusion that its operation was in violation of the law, Lyft was still obligated to cease its operation when the Commission directed it to do so. R.D. at 29. Based on this information, the ALJs concluded that, “[t]his factor, coupled with the Applicant’s failure to present any cohesive plan for managing and policing driver safety and vehicle integrity beyond the initial engagement with the driver, suggests that the Applicant is not committed to operating safely and legally.” *Id*. at 29-30.

#### Exceptions

Lyft objects to the ALJs’ finding that it is not committed to operating safely and legally. Lyft states that the ALJs inappropriately confined the scope of Lyft’s compliance history to its response to the Commission’s *Cease and Desist Order*. Lyft avers that the ALJs did not consider any other factors indicating that it is responsive to the Commission’s directives and is committed to operating safely and legally. Lyft’s Exc. at 30. Lyft also avers that the Commission’s Regulations and precedent establish that the public interest may weigh in favor of granting applications for Certificates of Public Convenience where regulatory violations are counterbalanced by public need and further actions of the applicant. Lyft argues that the Commission should grant its Application, permit it to continue meeting the needs of the public, and defer enforcement matters to the Complaint proceeding at Docket No. C-2014-2422713. *Id*. at 31.

Lyft asserts that it has shown consistent compliance with the Commission’s requirements, as evidenced by the following actions: (1) submitting the Application and the approved ETA Application; (2) revising its Application to clarify that vehicles used in its platform will be subject to inspection by Commission enforcement staff;   
(3) complying with Commission procedures regarding production of confidential information or trade secret information; (4) providing detailed insurance documents for each of its insurance policies; (5) modifying its original proposal to offer excess liability insurance coverage during Stages 2 and 3 and offering primary insurance coverage during both stages; (6) proposing $1 million policy limits for primary auto liability insurance for Stages 2 and 3; and (7) revising its Application to confirm that passenger receipts include the Commission’s customer complaint hotline and website. *Id*.

Lyft indicates that the two violations cited by the ALJs are closely related and still under investigation. Lyft opines that the necessity of the proposed service should be considered in an evaluation of the impact of potential violations of the Commission’s laws or Regulations on the outcome of this proceeding. Lyft believes that the fact that the Commission has not received any complaints from drivers or customers using the platform since the issuance of the *July 2014 ETA Order* should also be considered in Lyft’s favor. *Id*. at 32.

In their Replies to Exceptions, the Joint Protestants assert that Lyft has not demonstrated a commitment to providing safe and legal service. They aver that Lyft has benefitted from the profits of its business without undertaking any of the responsibilities associated with running a transportation business. Joint Protestants’ R. Exc. at 7. Likewise, JB Taxi states that Lyft should not be able to “pick and choose” among its obligations without later accounting for its unwillingness to take appropriate, responsive measures to directives issued by the Commission. JB Taxi R. Exc. at 7.

#### Disposition

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We acknowledge that, as Lyft indicates, it has made some efforts to comply with our Regulations. Of significance was Lyft’s compliance with our directive that Lyft provide specific trip data in the context of the Complaint proceeding at Docket No.   
C-2014-2422713. Nevertheless, we cannot ignore the allegations against Lyft in the Complaint proceeding and must factor that proceeding and the prior *Cease and Desist Order* into our assessment of Lyft’s propensity to operate legally. We note that the Complaint proceeding is ongoing, and no final decision has been reached regarding the allegations therein.

Even if it is determined that the Applicant operated in violation of a Commission Order, this finding, in itself, would not necessarily preclude it from obtaining lawful authority in a subsequent proceeding before the Commission. *See Brinks, Inc. v. Pa. PUC*, 500 Pa. 387, 456 A.2d 1342 (1983). In *Brinks*, the Pennsylvania Supreme Court explained that, if past unlawful operations were deemed conclusive of an applicant’s fitness, the Commission would be powerless to grant a motor carrier application despite the applicant’s demonstration of its fitness to perform services beneficial to the public.  “Such an automatic disqualification, moreover would improperly view the Commission’s statutory obligation to determine an applicant’s fitness prior to granting a contract carrier permit as a punitive measure directed against the individual wrongdoer rather than as a safeguard, the primary purpose of which is the protection of the public.”   *Id.* at 1344.

While we remain concerned about the allegations against Lyft, we are requiring Lyft to satisfy certain conditions in order to obtain a Certificate of Public Convenience. By taking these additional steps, Lyft must demonstrate to the Commission its commitment to comply with the Code, the Commission’s Regulations and Orders. If, on the other hand, Lyft fails to demonstrate its compliance with these conditions, no Certificate will issue pursuant to this Order.

As explained by the ALJs, the experimental service regulation under 52 Pa. Code § 29.352 provides the Commission with leeway for approving a motor carrier service not contemplated under the Regulations on a short-term basis. Section 29.352 provides time for the certificate holder to concretely demonstrate the public benefit and safety of the proposed service, as well as the ability to maintain an appropriate relationship with the Commission as the regulatory body. Pursuant to this Regulation, the Commission has flexibility to impose additional requirements on an applicant. Through this Order, we are exercising this flexibility to impose various compliance and reporting requirements as a condition of our approval of the Applicant’s operation as an experimental service. Accordingly, we view the propensity to operate safely and legally as an ongoing obligation of the Applicant during the period of its experimental service term. If the Applicant violates the conditions articulated in Appendix A of this Order, which includes the compliance and filing requirements, the Commission will take appropriate enforcement action. Accordingly, we will grant the Applicant’s Exception.

### Financial Fitness (52 Pa. Code § 41.14(b)(1))

#### Recommended Decision

The ALJs concluded that the Applicant provided no meaningful financial information which would permit the Commission to conclude that it has sufficient financial resources to meet its responsibilities. The ALJs stated that, although Mr. Okpaku stated that Lyft is funded by venture capital, Lyft did not provide any financial information regarding its operation in Pennsylvania. R.D. at 27.

#### Exceptions and Replies

In its Exceptions, Lyft avers that the ALJs erred in finding that it has not demonstrated financial fitness, because Lyft demonstrated that it has access to sufficient capital to fund its proposed operations. Lyft’s Exc. at 29. Lyft states that the ALJs disregarded its testimony that its proposed platform does not require ownership of localized physical assets in the manner that a traditional motor carrier service would. *Id*. (citing Tr. at 294). Lyft explains that, since it furnishes a mobile platform that facilitates transportation networking and does not furnish vehicles or directly provide transportation, much of the investment needed to operate its underlying technology is not tied to local Pennsylvania operations. Lyft believes that its testimony stating that the company has demonstrated expertise in recently completing a $250 million round of venture capital funding is more than sufficient to show that Lyft has the resources to fund Pennsylvania operations. Lyft’s Exc. at 29. Lyft indicates that, at a minimum, its testimony merits a finding that Lyft has access to venture capital and can raise sufficient funds to meet its regulatory obligations in Pennsylvania. *Id*. at 29-30. Lyft additionally states that, if the Commission is concerned about its financial fitness, “Lyft alternatively requests that the Commission approve the Application on condition that Lyft affirm that $1 million of its available funding will remain available for Pennsylvania operations.” *Id*. at 30.

In reply, the Joint Protestants argue that Lyft did not meet its burden of proof regarding financial fitness because it did not present evidence on this issue. Joint Protestants’ R. Exc. at 7. JB Taxi asserts that the Commission should not allow the Applicant to deflect attention from the record in this proceeding in favor of separate issues of absentee ownership, venture capital, and sophisticated investors. JB Taxi R. Exc. at 7.

#### Disposition

We begin by recognizing that the Application before us requests authority to operate an experimental service. Given the experimental and start-up nature of the service in areas previously unserved by the Applicant, it is not unusual that Lyft will be funded by venture capital.  Given the relatively short duration of the requested authority (two years), we believe that Mr. Okpaku’s testimony that the Lyft company netted $250 in its last round of venture capital funding is sufficient to demonstrate that Lyft has access to the resources to fund Pennsylvania operations. Tr. at 285. By the end of the two-year certification period, both Lyft and the Commission will be able to determine whether the service in question will be financially viable on a long-term basis. During the two-year certification period, of course, this Commission will not accept the argument that costs excuse Lyft from providing reasonable and adequate service and facilities, as required by Section 1501 of the Code.

Our statement of policy provides that we will consider “whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. § 41.14(b)(1). In this case, the Applicant owns or has the right to use the key technology required for its operation – the Lyft app. It has or will obtain insurance. It will not own the vehicles in question, and will not employ drivers. Considering the unique facts of this application for experimental service, we find that the Applicant has established that it has the capital, equipment, and other resources necessary to serve the territory requested. Accordingly, we reverse the ALJs’ findings with respect to financial fitness.

### Rates

#### Applicant’s Proposal

A closely related issue to Financial Fitness is the rates that the Applicant proposes to charge. In its Application, Lyft explained that it proposes to offer service at no-charge, suggest a donation, or charge a fare. Application at 2. The Applicant stated that if a fare is charged, it will disclose the fare calculation method, the applicable rates being charged, and the option for an estimated fare to the passenger before booking the ride. Upon completion of a trip, Lyft will transmit an electronic receipt to the passenger’s email address or app documenting the details of the trip. Application, Attachment A at 3.

In response to the *July 2014 ETA Order*, Lyft filed a tariff. Lyft has not filed a tariff in connection with its current Application; however, Lyft indicated that it intends to file the same tariff if this Application is approved. Tr. at 323. The tariff filed in connection with the ETA Application indicates*, inter alia,* that rates will be calculated on the basis of the distance and time between the point of origination and the destination and includes a minimum base fare and a maximum fee. The tariff provides that rates are subject to change within the minimum and maximum fee range. The tariff indicates that “Lyft reserves the right to adjust pricing as necessary to: (1) ensure compliance with applicable safety standards or regulations; or (2) respond to market signals such as passenger demand or driver participation.” JB Taxi Exh. 2. The tariff also provides for a cancellation fee and a trust and safety fee to defray the costs of Lyft’s safety standards. *Id*. Mr. Okpaku testified that Lyft employs a “dynamic pricing model,” in which it raises rates during a period of high demand in order to incentivize drivers to be out on the road. Mr. Okpaku explained that, in periods of low demand, Lyft will also lower its fares to incentivize passengers to use its service. Tr. at 274-275.

#### Recommended Decision

The ALJs issued some Findings of Fact regarding the Applicant’s tariff and pricing. The ALJs found that the Applicant’s dynamic pricing method is used to incentivize behavior of the drivers and passengers and is not based on costs and expenses like a traditional motor carrier tariff. R.D. at 13 (citing Tr. at 274-75, 327). The ALJs also stated that the Applicant’s proposed tariff does not provide a formula that is used to calculate either the multiplier for high demand periods or the discount for low demand periods. R.D. at 13 (citing Tr. at 323-24; JB Taxi Exh. 2). The ALJs noted that the Applicant’s “Terms and Conditions” provide for a “damage fee,” but this fee is not included in the proposed tariff. R.D. at 13 (citing Tr. at 345; JB Taxi Exh. 2).

#### Exceptions

The Parties did not file Exceptions on this issue.

#### Disposition

The ALJs issued Findings of Fact but did not recommend a rejection of the proposed tariff. According to the proposal, Lyft will advise a prospective customer of the applicable rates being charged and of the option of receiving an estimated fare before booking the ride.

The dynamic pricing proposal has similarities with the tariff we approved in *Application of Megabus Northeast, LLC, t/a Megabus.com*, Docket Nos.   
A-2010-2191780 and A-6412531 (Order entered May 5, 2011) (*Megabus*), which involved a pricing system designed to maximize revenues in line with level of demand. In *Megabus*, the applicant established a range of rates, between $1 per trip at the low end of the range and a specified maximum rate representing the highest rate that could be charged for a specific trip between two cities. The actual passenger price depends on the date of the booking relative to the date of travel and the level of demand for the particular trip. In approving the tariff, we noted that the fare information will be publicly available and will put potential customers on notice regarding how the rates will be set so that passengers may make purchasing decisions that are appropriate for them. *Megabus*, at 11.

We conclude that the Applicant’s proposed tariff provides the same level of information contained in *Megabus* that will allow passengers to make an informed decision about the rate and whether to use the service or not. We find this proposal to be reasonable. In view of the competitive nature of the TNC market, the fact that this is an application for Experimental Service, and because this proposal is similar to the approved tariff filed with the authorization of Lyft’s ETA, we will not require that fixed rates be set in the tariff.

Because Lyft has not yet filed a tariff in connection with this Application, we shall direct Lyft to file and maintain a tariff with the Commission setting forth the terms and conditions of its service in a form consistent with the *July 2014 ETA Order*. Moreover, as part of its Compliance Plan, Lyft shall fully explain how its proposed dynamic pricing model will be employed during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1, *et seq*.

### Record Keeping

The Commission will require Lyft to maintain records of service containing the following information: trip information (the transportation date and time; the vehicle identification number of the vehicle providing the transportation; the identity and license number of the driver; the charge for the transportation; the origination and destination of the transportation); vehicle information under 52 Pa. Code § 29.314(c); and the identity and driver’s license numbers of all drivers. The information may be retained in electronic format and must be maintained for two (2) years following the transportation date. Additionally, Lyft shall comply with the accident reporting requirements of 52 Pa. Code § 29.44, and shall maintain verifiable records consistent with this Regulation for a period of one year from the date of the accident. Moreover, Lyft shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority. All books, records, and facilities are subject to Commission inspection, audit and investigation pursuant to Sections 501, 331(a) and 506 of the Code. 66 Pa. C.S. §§ 501, 331(a) and 506. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and Regulations.

### Waiver of Regulations

The following Commission Regulations for call and demand service are hereby waived, unless expressly retained by this Opinion and Order: 52 Pa. Code

§§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356, and 29.402(3). All other Commission Regulations applicable to call and demand service shall apply unless waived or modified by this Opinion and Order. Any Commission Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Lyft.

### Compliance Plan and Periodic Audits

Lyft shall file a Compliance Plan within thirty (30) days of the entry date of this Opinion and Order. The Compliance Plan shall demonstrate how Lyft will achieve compliance with the conditions set forth in Appendix A, as described in this Opinion and Order. In no event will achievement of the conditions be accomplished later than thirty (30) days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Lyft employees and/or third-party contractors that will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Lyft must also submit to the Commission or ensure delivery of an applicable Form E, and a tariff, as specified herein.

The Commission thereafter will rule upon the completeness and adequacy of Lyft’s Compliance Plan and the concurrent filings within thirty (30) days. If found to be in compliance with each stated condition, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Lyft to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352. After Commission issuance of a Certificate of Public Convenience, Lyft thereafter shall submit quarterly reports demonstrating its continuing compliance with each Certificate condition.

In the event that Lyft declines to accept the Certificate conditions specified in this Opinion and Order or the Commission rejects the Compliance Plan or the concurrent filings required by this Opinion and Order, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Lyft in the *July 2014 ETA Order* shall be immediately revoked.

# Conclusion

Based upon our review of the record, and given the experimental nature of the service, we find that Lyft has sustained its burden of proving a public demand or need for the proposed service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally.[[19]](#footnote-19) Accordingly, we shall grant Lyft’s Exceptions, in part, and deny them, in part; deny the Joint Protestants’ Exceptions; reverse the Recommended Decision; and grant the Application subject to terms and conditions; all consistent with this Opinion and Order.[[20]](#footnote-20) We stress that our discussion herein is limited to the Application before us and shall have no bearing on any pending enforcement actions for past conduct; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed on October 24, 2014, by Lyft, Inc. are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions filed on October 27, 2014, by Executive Transportation Company, Inc., Aceone Trans Co., AF Taxi, Inc., AG Taxi, Inc., AGB Trans, Inc., Almar Taxi, Inc., ATS Cab, Inc., BAG Trans, Inc., BNG Cab Co., BNA Cab Co., BNJ Cab, Inc., Bond Taxi, Inc., BSP Trans, Inc., Double A Cab Co., FAD Trans, Inc., GA Cab, Inc., GD Cab, Inc., GN Trans, Inc., God Bless America Trans, Inc., Grace Trans, Inc., IA Trans, Inc., Jarnail Taxi, Inc., Jaydan, Inc., LAN Trans, Inc., LMB Taxi, Inc., MAF Trans, Inc., MDS Cab, Inc., MG Trans Co., Noble Cab, Inc., Odessa Taxi, Inc., RAV Trans, Inc., Rosemont Taxicab Co., Inc., S&S Taxi Cab, Inc., SAJ Trans, Inc., Saba Trans, Inc., SF Taxi, Inc., Society Taxi, Inc., Steele Taxi, Inc., TGIF Trans, Inc., V&S Taxi, Inc., VAL Trans, Inc., VB Trans, Inc., VSM Trans, Inc., BM Enterprises, Inc., t/a A.G. Taxi, Bucks County Services, Inc., Dee Dee Cab Company, Germantown Cab Company, Ronald Cab, Inc., t/a Community Cab, Shawn Cab, Inc., t/a Delaware County Cab, and Sawink, Inc., t/a County Cab, are denied.

3. That the Recommended Decision issued on October 9, 2014, by Administrative Law Judges Mary D. Long and Jeffrey A. Watson is reversed.

4. That the Application of Lyft, Inc. for motor common carrier of persons in experimental service between points in Pennsylvania filed on April 3, 2014, is hereby approved, granting the following right:

To transport, by motor vehicle, persons in the experimental service of passenger trips between points in Pennsylvania, excluding trips which originate or terminate at points in Allegheny County and the City of Philadelphia.

The transportation authority is subject to the terms and conditions set forth herein.

5. That, within thirty (30) days of the entry of this Opinion and Order, Lyft, Inc. shall submit the following to the Commission:

a. A Compliance Plan demonstrating how Lyft, Inc. will achieve compliance with the conditions set forth in Appendix A and this Opinion and Order. The Plan shall include the identities and office locations of the Lyft, Inc. employees and/or third-party contractors who will be responsible for regulatory compliance.

b. A Form E Certificate of Insurance evidencing compliance with the Commission’s insurance requirements and coverage amounts set forth in this order, *regardless* of any insurance coverage held by Lyft, Inc.’s drivers.

c. A tariff, consistent with this Opinion and Order. Instructions for filing of a tariff can be found at: [*www.puc.pa.gov/general/onlineforms/pdf/Initial\_Tariff\_Instructions.pdf*](http://www.puc.pa.gov/general/onlineforms/pdf/Initial_Tariff_Instructions.pdf).

6. That, within thirty (30) days of Lyft, Inc.’s compliance with the filing requirements set forth in Ordering Paragraph No. 5 above, the Commission will rule upon the completeness and adequacy of the requirements set forth in Appendix A and this Opinion and Order. If found to be in compliance with Appendix A and this Opinion and Order, a Certificate of Public Convenience shall issue evidencing the Commission’s approval of the right to operate as above determined.

7. That after issuance of a Certificate of Public Convenience, Lyft, Inc. shall submit quarterly reports to the Commission’s Bureau of Technical Utility Services demonstrating its continuing compliance with each Certificate of Public Convenience condition.

8. That in the event Lyft has not, on or before thirty (30) days from the date of entry of this Opinion and Order, complied with the requirements set forth in Ordering Paragraph No. 5 above, or that the filings required under Ordering Paragraph No. 5 are not approved by this Commission, the Application shall be dismissed without further proceedings and the Emergency Temporary Authority granted to Lyft, Inc. at Docket No. A-2014-2432304 shall be immediately revoked.

9. That this Certificate of Public Convenience will be valid until abandoned, until two (2) years from the date of issuance, or until the Commission enacts regulations governing the new class of service, whichever occurs first.

10. That the grant of Experimental Service Authority shall have no bearing on the final disposition of ongoing compliance proceedings.

11. That the certificate holder shall comply with all provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all Regulations applicable to call and demand service with the exception of the following Regulations which are waived: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate. Additionally, the Commission will continually review the service to ensure that it is necessary or proper for the service, accommodation, convenience or safety of the public.

12. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

13. That Lyft, Inc. shall be subject to assessments pursuant to 66 Pa. C.S. § 510 and shall comply with the assessment reporting requirements of 52 Pa. Code

§ 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority.

14. That Lyft, Inc. shall maintain records mandated in this Opinion and Order for the time periods specified for each category of records.

15. That the vehicles used in the experimental service provided by Lyft, Inc. shall be subject to inspection by Commission enforcement officers; and that the books, records and facilities of Lyft, Inc. shall be subject to inspection, audit and investigation pursuant to 66 Pa. C.S. §§ 331(a), 501, and 506.

16. That the authority granted herein, to the extent that it duplicates authority now held or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

17. That a copy of this Opinion and Order be served on the Commission’s Bureau of Technical Utility Services.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 18, 2014

ORDER ENTERED: December 18, 2014

**Appendix A**

**Lyft, Inc. -- Experimental Authority Certificate Conditions**

1. **Insurance**
2. Pursuant to 52 Pa. Code § 32.11(a), a Form E Certificate of Insurance shall be filed by Lyft, Inc. (Lyft) affirming primary coverage for Stage 1 at coverage liability levels consistent with Commission regulations for motor carriers, plus $1,000,000 coverage for Stages 2 and 3. In no event shall the levels of coverage in any stage fall below the standards set forth in 52 Pa. Code § 32.11(b).
3. Lyft shall clearly and adequately inform drivers, in writing, of the levels of insurance coverage provided during Stages 1, 2 and 3 and instruct drivers regarding the appropriate protocol to be followed in case of an accident. Lyft shall maintain verifiable records thereof for three years in writing or electronic format.
4. Lyft shall direct drivers, conspicuously in written or electronic form, to contact their personal automobile insurer regarding any policy impacts that may be caused by operating the vehicle for TNC use. As part of this notification, drivers shall verify that they agree to make such contact with their personal insurer within a specified period of time. Such verification may be in written or electronic form, and must include the driver’s signature (either electronic or written). Lyft shall maintain verifiable records thereof for three years.
5. **Driver Integrity**
6. Lyft shall continue to undertake driver background checks of the scope and breadth described in its Application and consistent with 52 Pa. Code §§ 29.503 and 29.505 both at the time of driver sign-up and annually thereafter. Lyft shall maintain verifiable records thereof for two years.
7. Lyft shall undertake drivers’ history checks consistent with 52 Pa. Code § 29.504 both at the time of driver sign-up and annually thereafter. Lyft shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Lyft shall maintain verifiable records thereof for three years.
8. **Vehicle Safety**
9. Lyft shall ensure that drivers’ vehicles successfully pass PennDOT inspection pursuant to 52 Pa. Code § 29.405 annually. Lyft shall maintain verifiable records thereof for three years.
10. Lyft shall ensure that drivers’ vehicles remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402(1) and (2) and 29.403. Consistent with Commission Regulations, vehicles shall be subject to periodic inspection as set forth at 52 Pa. Code §§ 29.406 and 29.407. Lyft shall maintain verifiable records thereof for three years.
11. Lyft shall not permit the use of vehicles older than eight model years. Lyft shall maintain verifiable records thereof for three years.
12. Lyft shall require that all vehicles be marked as specified at 52 Pa. Code §§ 29.71 and 29.72 while operating in Stages 1, 2 or 3.
13. **Recordkeeping, Reports and Audits**
14. Lyft shall maintain verifiable records for service for a period of two years after the service was provided. These records include: trip information (date, time, origination, destination, and fare); vehicle information under 52 Pa. Code

§ 29.314(c); and the identity and driver’s license numbers of all drivers.

1. Lyft shall comply with the accident reporting requirements of 52 Pa. Code § 29.44. Consistent with this regulation, Lyft shall maintain verifiable records thereof for a period of one year from the date of the accident.
2. Lyft shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority.
3. Lyft acknowledges that the Commission is authorized, pursuant to 66 Pa. C.S.

§§ 331(a), 501 and 506, to inspect, audit and investigate any books, records and facilities of Lyft as they relate to certificated services provided by Lyft. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and regulations.

5. Lyft shall maintain a tariff with the Commission setting forth the terms and conditions of service, in a form consistent with the Commission’s Emergency Temporary Authority Order, issued on July 24, 2014 at Docket No. A-2014- 2432304. As part of its Compliance Plan, Lyft shall fully explain its proposed dynamic pricing model during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1, *et seq*.

**E. Waiver of Regulations**

1. The following Commission Regulations for call and demand service are hereby waived unless expressly retained by this Order: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). All other Commission Regulations applicable to call and demand service shall apply unless waived or modified by this Order.
2. Any Commission Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Lyft.

**F. Compliance Plan and Periodic Audits**

1. Lyft shall file a Compliance Plan within thirty (30) days of the entry date of this Order. The Compliance Plan shall demonstrate how Lyft will achieve compliance with the conditions set forth herein. In no event will achievement of the conditions be accomplished later than thirty (30) days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Lyft employees and/or third-party contractors that will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Lyft must also submit to the Commission or ensure delivery of an applicable Form E and an updated tariff.
2. The Commission thereafter will rule upon the completeness and adequacy of Lyft’s Compliance Plan within thirty (30) days. If found to be in compliance with each stated condition, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Lyft to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352.
3. After Commission approval of the Compliance Plan, Lyft thereafter shall submit quarterly reports demonstrating its continuing compliance with each certificate condition.
4. In the event that Lyft declines to accept the certificate conditions specified in this Order or the Commission rejects the Compliance Plan, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Lyft by Order entered July 24, 2014 at Docket No. A-2014-2432304 shall be immediately revoked.

1. Concord Limousine, Inc. (Concord) is also listed as a Protestant in these Exceptions, however, there is no record that it filed a protest in this proceeding. Accordingly, the reference to Concord as a Protestant in these Exceptions will be disregarded. [↑](#footnote-ref-1)
2. The Secretarial Letter accompanying the Recommended Decision set a compressed time-frame which required the filing of Exceptions by October 24, 2014, and the filing of Replies to Exceptions by November 3, 2014. We note that the Joint Protestants filed their Exceptions on October 27, 2014, after the deadline set forth in the Secretarial Letter. Likewise, JB Taxi filed its Replies to Exceptions on November 4, 2014, one-day after the November 3, 2014 filing deadline. Nevertheless, pursuant to 52 Pa. Code § 1.2(a), we will consider both of these filings because there is no indication that the late filing of these documents affects the substantive rights of the Applicant or any other Parties. [↑](#footnote-ref-2)
3. Section 29.352 of the Commission’s Regulations, 52 Pa. Code § 29.352, which pertains to certification for the provision of experimental service, provides the following:

   § 29.352. Experimental service   
     
    In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service. An application for a certificate or amendment shall state that it is an application for an experimental service. Holders of experimental certificates shall abide by this chapter except those which the Commission shall explicitly state do not apply. Holders of experimental certificates shall abide by an additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate. A certificate for experimental service shall be valid only until the service is abandoned, until 2 years have elapsed from the time the certificate was approved or until the Commission enacts amendments to this chapter pertaining to the new class of service represented by the experimental service, whichever event occurs first. [↑](#footnote-ref-3)
4. Billtown withdrew its Protest on September 15, 2014. [↑](#footnote-ref-4)
5. The ALJs later dismissed Paul’s Cab Service because no attorney entered an appearance on its behalf. Tr. at 203-204. [↑](#footnote-ref-5)
6. MTR withdrew its Protest on September 15, 2014. [↑](#footnote-ref-6)
7. The hearing was a joint proceeding for both this Application and Lyft’s Application for Allegheny County at Docket No. A-2014-2415045. [↑](#footnote-ref-7)
8. While the Policy Statementis not a binding norm, it announces the Commission’s tentative intentions for the future.  *See Pa. Human Relations Comm’n v. Norristown Sch. Dist.*, 473 Pa. 334, 349-350, 374 A.2d 671, 679 (1977). [↑](#footnote-ref-8)
9. However, we note the pending Complaint proceeding against Lyft at *Pa. PUC v. Lyft, Inc.*, Docket No. C-2014-2422713, which involves the issue of whether the activities of Lyft fall within the definition of “broker.” Our decision herein has no impact on the determination of the unanswered question of whether, under Pennsylvania law, Lyft acted as a broker of transportation service during the time periods alleged in the pending Complaint proceeding. [↑](#footnote-ref-9)
10. *See also, Application of Frontier Van Lines Moving and Storage, Inc.*, Docket No. A-00122436 (Order entered June 29, 2007) (Commission found that the applicant established public need or demand despite the absence of witnesses for several of the counties in which the applicant proposed to provide service). [↑](#footnote-ref-10)
11. We note that the current version of Section 29.314(d) of our Regulations, 52 Pa. Code § 29.314(d), establishes an age limit of eight model years but does not impose an odometer limit for call and demand service. Pursuant to our Final Rulemaking Order in *Vehicle List, Age, and Mileage Requirements for Taxis and Limousines, 52 Pa. Code §§ 29.314(c)-(d), 29.333(d)-(e)*, Docket No. L-2013-2349042 (Order entered November 19, 2014) (*Rulemaking Order*), we approved an amendment to Section 29.314(d) to prohibit the use of vehicles in call and demand service that exceed either of the following conditions: (1) ten model years for conventional vehicles or twelve model years for alternatively fueled vehicles; or (2) 350,000 odometer miles. These amendments are subject to additional review and approval pursuant to the Commonwealth’s regulatory review process. *Rulemaking Order* at 38. When these amendments become effective, any changes shall be applicable to Lyft. [↑](#footnote-ref-11)
12. As discussed below, we will also waive additional regulations, which we consider to be inapplicable to the experimental service proposed in this Application, consistent with 52 Pa. Code § 29.352. [↑](#footnote-ref-12)
13. Mr. Okpaku provided testimony on behalf of Lyft. Mr. Okpaku is Lyft’s Director of Public Policy and is based in San Francisco, California. His job is to oversee Lyft’s efforts to ensure that legislation or regulations that are implemented are appropriate to the transportation network company model for Lyft. Tr. at 234-235. [↑](#footnote-ref-13)
14. While Lyft refers to the Stages as “Periods,” we will use the term Stages herein for ease of reference, as the Stages described by Lyft correspond to the three Stages described in the *July 2014 ETA Order* at 17. [↑](#footnote-ref-14)
15. 52 Pa. Code 32.11(b) provides:

    (b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle capable of transporting fewer than 16 passengers shall be in an amount not less than $35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service. The $35,000 minimum coverage is split coverage in the amounts of $15,000 bodily injury per person, $30,000 bodily injury per accident and $5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of $25,000 and first party wage loss benefits in the amount of $10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. §§ 1701--1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits). [↑](#footnote-ref-15)
16. We believe that the Form E filing requirement, specifying the mandatory levels of liability coverage for drivers, would supersede any inconsistent provisions contained in agreements between Lyft and its drivers. [↑](#footnote-ref-16)
17. As an example, the ALJs cited *Application of Adamo Limousine, Ltd.*, Docket No. A-00115789 (Order entered June 2, 2000). [↑](#footnote-ref-17)
18. In the Complaint proceeding, I&E has alleged that Lyft provided unauthorized service as a broker of motor carrier services and that Lyft provided service in violation of the Commission’s *Cease and Desist Order*. [↑](#footnote-ref-18)
19. Although the Recommended Decision determined that the Applicant failed to satisfy its burden of proof, it also addressed the Protestants’ burden under 52 Pa. Code § 41.14(c). We agree with the ALJs’ statements that the Protestants in this proceeding did not offer sufficient evidence to sustain their burden of proof under 52 Pa. Code

    § 41.14(c). R.D. at 30. [↑](#footnote-ref-19)
20. In conditionally approving the Application, we note that the Application does not pertain to a request for experimental service in the City of Philadelphia because it would directly conflict with the jurisdiction of the Philadelphia Parking Authority pursuant to 53 Pa. C.S. §§ 5701, *et seq*. Additionally, we emphasize that our Order does *not* authorize Lyft to provide experimental service originating or terminating at points in the City of Philadelphia. [↑](#footnote-ref-20)