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January 2, 2015

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**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: PETITION FOR PARTIAL RECONSIDERATION OF OPINION AND ORDER DATED DECEMBER 18, 2014**

**Application of Lyft, Inc. (Experimental Service in Allegheny County) (A-2014-2415045)**

**Application of Lyft, Inc. (Experimental Service in Pennsylvania) (A-2014-2415047)**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is a Petition for Partial Reconsideration of the Commission's Opinion and Order dated December 18, 2014. As shown by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

Andrew T. George
Counsel for Lyft, Inc.
PA Attorney ID # 208618

cc: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Administrative Law Judge Jeffrey A. Watson (via e-mail and First-Class Mail)
Counsel of Record
Certificate of Service

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | |
|---|---|
| Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania | A-2014-2415047 |
| Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County | A-2014-2415045 |

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**PETITION FOR PARTIAL RECONSIDERATION OF OPINION AND ORDER DATED DECEMBER 18, 2014**

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Pursuant to Section 703(g) of the Pennsylvania Public Utility Code and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, Lyft, Inc. ("Lyft" or the "Company") files this Petition for Partial Reconsideration (the "Petition") of the Opinion and Order dated December 18, 2014 in the above-captioned matters ("December 18 Order").[1]

## INTRODUCTION

1. On December 18, 2014, the Commission approved Lyft's applications for experimental transportation authority, subject to Lyft's satisfaction of certain requirements set forth in Appendix A of the December 18 Order. Lyft welcomes the opportunity to work with the Commission and its staff to develop a compliance plan that meets those requirements. But

[1] Pending before the Commission are parallel proceedings on Lyft's applications to operate Statewide and to operate in Allegheny County. Although this petition is made as to the orders entered December 18, 2014 in both proceedings, for simplicity's sake, all citations to record documents will refer to documents filed in the Statewide proceeding.

through this Petition, Lyft requests that the Commission revisit two aspects of its disposition regarding Lyft's compliance with the relevant insurance regulations.

2. First, Lyft asks the Commission to reconsider its interpretation of 52 Pa. Code § 32.11(b) to the extent the December 18 Order would foreclose the possibility that a driver's personal or commercial policy would satisfy the requirements of that section where the driver's policy affirmatively recognizes the driver's participation in Transportation Network Company ("TNC") activity. Reconsideration is warranted because, in a growing trend, insurance companies in at least 8 states—including Pennsylvania—now offer or are in the process of filing policies and/or rules to offer policies specifically designed for drivers who intend to use TNC applications. However, in the December 18 Order, the Commission held that section 32.11(b) requires *Lyft's* insurance coverage to be primary during Stages 1 through 3.[2] *See* December 18 Order at 46. Because the plain language of section 32.11(b) does not require Lyft to provide primary coverage, the Commission should find that a driver's TNC-specific policy could satisfy the requirements of section 32.11(b), and it would then be primary to Lyft's coverage, which would become excess until legally required policy limits are met. To the extent the current record is inadequate for the Commission to address this issue, then Lyft proposes that the Commission grant rehearing and re-open the record to take evidence on this issue.

3. Second, Lyft asks the Commission to reconsider the requirement that Lyft direct drivers intending to use its application to disclose that fact to their insurance companies (the "insurance disclosure requirement"), *see* December 18 Order at 46, because that requirement is

[2] There are four relevant "stages" (referred to herein as "Stage" or "Stages") to Lyft's application: "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 [ready to accept a ride request]. 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." December 18 Order at 45.

not supported by substantial evidence in the record. The Commission identified only a single basis for that requirement: a need to ensure that using a TNC application would not void, or make voidable, a driver's personal insurance policy during Stage 0, which is when the driver is using a car for purely personal use. *See id*. at 46–48. In other words, the Commission expressed concern that the use of a TNC application would allow an insurance company to retroactively terminate coverage of the entire policy (presumably because the insurer would assert that using a TNC application constitutes commercial activity), thereby denying coverage for an incident that occurred during Stage 0. *See id*. Beyond mere speculation, there was no evidence to support this concern, as shown below in Section II.A. To the contrary, several witnesses discussed the impact of commercial activity on a personal policy in terms of denial or exclusion of coverage, not in terms of void policies. Because there is no evidence in the record to support a conclusion that activity during Stages 1 through 3 would have any impact on insurance coverage during Stage 0, the insurance disclosure requirement lacks a rational basis. This is particularly true given that there was no testimony regarding why insurance companies could not collect this information themselves. If the testimony suggested anything, it was unambiguous that insurance companies regularly collect information from drivers regarding intended use of the insured vehicle. *See* Gene Brodsky, Hr'g Tr. (Sept. 10, 2014) at 541:8–16 ("Q. [I]nsurance companies insuring passenger carrier service ask information about the drivers and the vehicles they insure and how the driver intends to use that vehicle; is that correct? A. Right, we obtain all that information. It's usually understood that the vehicles are used for the public livery purposes.").[3]

[3] The lack of evidence supporting the insurance disclosure requirement also means that the requirement violates Lyft's First Amendment rights. Through the insurance disclosure requirement, the Commission is compelling Lyft to engage in commercial speech absent any rational basis, which infringes on Lyft's First Amendment right to not speak if it so chooses.

4. For these reasons, Lyft requests that (i) the Commission reconsider its decision to the extent it forecloses the possibility that an individual TNC-insurance policy could satisfy the requirements of section 32.11(b), and (ii) the Commission reconsider its decision to impose an insurance disclosure requirement on Lyft because the requirement is not supported by substantial evidence and would violate Lyft's constitutional rights.

## BACKGROUND

5. On April 3, 2014, Lyft filed applications for experimental transportation authority to operate in Allegheny County and Pennsylvania. *See* PA PUC Dkt. Nos. A-2014-2415045, A-2014-2415047.

6. On August 27, September 3, and September 10, the presiding Administrative Law Judges heard testimony relating to Lyft's applications, and on September 17, the record was closed.

7. On October 2, 2014, the ALJs recommended denying Lyft's applications. *See* Recommended Decision, Dkt. Nos. A-2014-2415045, A-2014-2415047 (Oct. 2, 2014) ("Recommended Decision"). Relevant here, the ALJs found that "[section 32.11(b)] does not contemplate anything other than primary coverage." Recommended Decision at 23. In support of that assertion, the ALJs did not analyze the text of section 32.11(b) in any way and did not cite any authority. *See id*. at 21–25. The ALJs also asserted that "a person becoming a driver for Applicant faces potential changes in that person's personal auto insurance, including possible cancellation or an increase in rate." *See id*. at 24. Once again, the ALJs did not cite any evidence in the record or any authority supporting their conclusion.

8. On October 24, 2014, Lyft filed exceptions to the ALJs' Recommended Decision. Lyft objected to the ALJs' interpretation of section 32.11(b) as requiring that Lyft's insurance be primary. *See* Exceptions of Lyft at 15.

9. On December 18, 2014, the Commission entered an order approving both applications. The Commission agreed with the ALJs that section 32.11(b) requires Lyft's insurance coverage to be primary during all three Stages, *see* December 18 Order at 46, and held that the lack of an insurance disclosure requirement "creates potential uncertainties or gaps in coverage." December 18 Order at 45.[4] On the first point, the Commission did not discuss or analyze the language of section 32.11(b) in reaching its conclusion, and did not cite any authority reaching the same interpretation. On the second point, the Commission expressed "concern[] that Lyft drivers may not understand that this commercial use of their personal vehicles could void their existing personal vehicle insurance." December 18 Order at 46. But, again, the Commission did not cite any authority—in the record or otherwise—in support of its concern. *See* December 18 Order at 46. The Commission also did not address testimony in the record that commercial activity is simply excluded under the standard personal insurance policy, *see, e.g.*, *infra* at 10–11, and the lack of testimony that insurance policies are void or voidable for personal use where the covered vehicle is used for commercial activity.

**STANDARD OF REVIEW**

10. Under Section 703(g) of the Public Utility Code, "[t]he [C]ommission may, at any time . . . amend any order made by it." 66 Pa. C.S. § 703(g). Parties submitting petitions for reconsideration "may properly raise any matter designed to convince" the Commission that it should amend an order. *Application of Consolidated Rail Corp., et. al.*, 2012 WL 3042071 (Pa. P.U.C. 2012). Such matters include "new and novel arguments not previously heard" or

[4] The disclosure requirement is listed in Appendix A to the December 18 Order. It states, "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."

"considerations which appear to have been overlooked or not addressed" by the Commission. *Id*. (internal quotes and citations omitted).

## ARGUMENT

### I. The Commission should reconsider whether section 32.11(b) requires Lyft's insurance to be primary.

11. The Commission held that section 32.11(b) requires *Lyft's* insurance coverage to be primary during Stages 1 through 3. That conclusion is not supported by the plain language of the regulation. Because the plain language of section 32.11(b) does not require any entity to provide primary coverage, as opposed to contingent or excess coverage, the Commission should reconsider its interpretation of that section and find that, at a minimum, the requirements of section 32.11(b) are satisfied where a driver has an approved TNC-specific policy.

#### A. The Commission required Stage 1 primary insurance without considering Lyft's exceptions showing that the relevant statute has no such requirement.

12. The ALJs' Recommended Decision found that, because Lyft's proposed Stage 1 coverage was "contingent" and not "primary," it fell short of section 32.11(b), which "does not contemplate anything other than primary coverage" during Stages 1 through 3. *See* Recommended Decision at 23. The Commission "concur[red] 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." December 18 Order at 45. Neither of those decisions cited any authority or offered any analysis or explanation supporting the conclusion that section 32.11(b) requires primary coverage and does not permit contingent coverage.

13. And the text of section 32.11(b) offers no such support:

> 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.

14. In short, at a minimum, section 32.11(b) requires that there be $35,000 in liability coverage, split into $15,000 bodily injury per person, $30,000 bodily injury per accident, and $5,000 property damage per accident. There must also be $25,000 in "first-party" medical benefits and $10,000 in "first-party" wage loss benefits for passengers and pedestrians. It expresses no preference between primary and contingent coverage. Contrary to what may have been assumed, "first party" benefits have nothing to do with coverage being primary or contingent. "First party" simply means that the insured (such as the driver)—and not a third party (such as another driver)—receives the benefits. *See* Black's Law Dictionary 922 (10th ed. 2014) (defining "first-party insurance" as a "policy that applies to an insured or the insured's own property, such as life").[5]

15. For those reasons, the Commission should find that section 32.11(b) is limited to setting forth the terms of coverage without specification as to how that coverage will be provided. Therefore, it would be entirely consistent with the terms of section 32.11(b) to permit an individual TNC-specific policy to satisfy the coverage requirements.

[5] Lyft raised these points in its exceptions to the ALJs' Recommended Decision. *See, e.g.*, Exceptions of Lyft at 15 ("Section 32.11 references 'liability insurance' with no specification as to whether the insurance must be primary or contingent."); *id*. at 15 n.7 ("Even if Section 32.11 of the Commission's Regulations required primary insurance, Section 512 of the Public Utility Code would authorize the Commission to apply contingent insurance as the appropriate coverage for the proposed experimental service Application."). The December 18 Order did not address these points.

### B. Insurance regulations should account for and encourage new TNC-specific insurance products.

16. A reading of section 32.11(b) that focuses on the ultimate terms of coverage also has the benefit of promoting market-based products to efficiently serve a need, whereas a reading of section 32.11(b) that would require Lyft, and Lyft alone, to provide coverage during Stages 1 through 3 would undermine the development of TNC-specific policies.[6] Pennsylvania should follow the model of other jurisdictions, which are permitting this market-based solution to take root and are not focused on requiring that the TNCs themselves provide primary coverage at all times, provided that primary coverage exists.

17. For example, Colorado enacted temporary regulations this past year, which require a TNC to "provide liability coverage if the driver's insurer for personal automobile insurance validly denies coverage . . . or the driver otherwise does not have personal automobile insurance coverage." Colo. Rev. Stat. Ann. § 40-10.1-604(3)(a). Similarly, in late-November 2014, California enacted a rule permitting TNCs to satisfy insurance requirements through "(a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b)." Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, & New Online-Enabled Transp. Servs., 2014 WL 6791595, at *14 (Nov. 20, 2014).

18. By reconsidering its interpretation of section 32.11(b), the Commission will ensure that Pennsylvania citizens accrue all the benefits of a market-based insurance system

[6] *See, e.g.*, Press Release: Erie Insurance offers unique, new ridesharing coverage for drivers: New car insurance fills gaps and covers drivers before, during and after trips, available at http://investor.shareholder.com/erie/releasedetail.cfm?ReleaseID=883533 (last visited Dec. 26, 2014).

without risking a loss of primary insurance coverage.

## II. The PUC should reconsider the insurance disclosure requirement.

19. The Commission should reconsider its decision to compel Lyft to require speech between drivers and their insurance companies for two main reasons. First, the insurance disclosure requirement is not supported by any evidence in the record. Second, the insurance disclosure requirement violates Lyft's First Amendment rights.

### A. The insurance disclosure requirement is not supported by substantial evidence.

20. As it stands, the Commission has held that Lyft must make its insurance coverage primary during Stages 1 through 3 (though primary coverage requirements should be satisfied where drivers independently obtain primary TNC coverage). Thus, from the moment a driver opens the Lyft application in driver mode, Lyft is responsible for primary coverage.

21. However, the Commission also seeks to regulate the purported effects of using the Lyft application when it is *not* opened in a manner ready to accept ride requests. The Commission speculates that a driver's conduct during Stages 1 through 3 could impact the driver's insurance coverage during Stage 0, i.e., the time when a driver is using the vehicle for purely personal use. *See* December 18 Order at 46–48. More specifically, the Commission expressed concern that the use of a TNC application could instantaneously make a driver's policy void or voidable, which would enable the insured to deny coverage for events that occurred during Stage 0. *See id*. at 46. For that reason, the Commission posits that it is reasonable to require Lyft to direct its drivers to disclose their intent to use the Lyft application to their insurance companies. *See id*. But that analysis raises an important question: Is there any evidence in the record that using a TNC application impacts coverage during Stage 0? The unavoidable answer is no.

22. Although TNC applications are new, the idea that a driver will use a personal vehicle for transporting passengers for compensation is not new. Insurance companies have long included a livery exclusion in standard personal insurance contracts, as acknowledged by Jonathan Greer, Vice President of the Insurance Federation. *See* Jonathan Greer Hr'g Tr. (Sept. 10, 2014) at 508:10–19. As part of this proceeding, several witnesses testified about the operation of a livery exclusion, and all of them discussed it in terms of *excluding* coverage, not in terms of voiding policies. *See, e.g.*, Alex Friedman Hr'g Tr. (Aug. 27, 2014) at 132:19–21 (noting that personal liability policies do not cover commercial activities without any discussion of commercial activity voiding a policy);[7] Jonathan Greer Hr'g Tr. (Sept. 10, 2014) at 507:10–15 (discussing impact of using TNC application on coverage in terms of denial of coverage, not voiding of policy); Gene Brodsky, Hr'g Tr. (Sept. 10, 2014) at 521:8–14 ("Q. Do taxi cabs—do any motor carriers that you are aware, require drivers to maintain their own personal insurance for activities involving the use of the vehicle that is providing the motor carrier service? A. No. Commercial use of a vehicle delivering passengers is excluded under any other insurance company."); *id*. at 522:16–22 ("Delivering a passenger or somebody's property for a fee is strictly excluded from coverage."); *id*. at 535:3–8 (explaining that personal insurer will "deny" coverage for claim relating to business operations); *id*. at 537:2–8 (explaining concern that "insurance carrier, in case of an accident, would deny coverage if they would argue that their insured was in the scope of the business of delivering packages for a fee").

23. The only passing reference to the possibility that using a TNC application could void a driver's policy came by Mr. Greer in response to a line of questions about *underwriting risk*. *See* Jonathan Greer Hr'g Tr. (Sept. 10, 2014) at 463:9–18 ("Q. Do you see anything here,

[7] Mr. Friedman dispatches, manages, and owns taxicab medallions, and is also the President of the Pennsylvania Taxi Association. *See* Alex Friedman Hr'g Tr. (Aug. 27, 2014) at 73:10–14.

as an insured becomes a driver, that a personal auto—that could change his personal auto insurance terms? A. Yes. It's a material change in the risk. It would—it could result in a policy holder being terminated from their [*sic*] personal auto insurer . . . ."). Yet, the meaning of Mr. Greer's statement is far from clear. He refers to "material change in the risk" in an insurer, but there was never any testimony regarding the existence of a "material risk" clause that enables insurers to void policies based on such a change in risk. And, the fact that insurers have already contemplated the possibility that an insured may use a vehicle for commercial purposes, and specifically for transporting individuals for compensation, through the use of a livery exclusion, makes it highly unlikely that the same behavior is governed by some type of unspoken material risk clause. If using a TNC application posed any risk to a driver's coverage during Stage 0, that fact could have been easily demonstrated. The absence of such evidence, even though the issue was touched on by several witnesses, shows that any concerns about the use of a TNC application voiding coverage during Stage 0 are unfounded.

24. Because the need for an insurance disclosure requirement is not supported by any evidence in the record, and therefore lacks a rational basis, the Commission should reconsider its decision to impose it.

### B. The insurance disclosure requirement violates Lyft's First Amendment rights.

25. In addition, the First Amendment prohibits a government agency from compelling commercial speech unless the compelled speech is disclosures of purely factual information to prevent confusion or deception, the disclosure requirement is reasonably related to the government's interest in preventing deception, and the disclosure requirement is not unjustified or unduly burdensome. *See Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). Here, the insurance disclosure requirement constitutes

compelled commercial speech, and the Commission has failed to show that the required disclosures are justified and not unduly burdensome.

26. To avoid running afoul of the First Amendment, the disclosure requirements must be "purely factual and uncontroversial information" to prevent "confusion or deception," "reasonably related to the State's interest in preventing deception of consumers" and cannot be "unjustified or unduly burdensome." *Zauderer*, 471 U.S. at 651; *see also Dwyer v. Cappell*, 762 F.3d 275, 281–82 (3d Cir. 2014). The record supporting such a disclosure must show that the harm to be averted by disclosure is "potentially real, not purely hypothetical." *Ibanez v. Florida Dep't of Bus. & Prof'l Regulation, Bd. of Accountancy*, 512 U.S. 136, 146 (1994).

27. The December 18 Order does not meet that burden. Because Lyft is going to be guaranteeing Stage 1 coverage (whether primary or contingent), and because there is no evidence supporting the existence of a Stage 0 coverage "gap," the insurance disclosure requirement is not reasonably related to the protection of anyone. And, to the extent the disclosure requirement protects anyone, it protects not "consumers" but third-party insurance companies.

## CONCLUSION

28. For the foregoing reasons, Lyft requests that the Commission grant its Petition for Partial Reconsideration of the December 18 Order.

Dated: January 2, 2015

Respectfully submitted:

/s/ Andrew George

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**VERIFICATION STATEMENT**

I, Andrew George, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

/s/ Andrew T. George
Andrew T. George
Counsel for Lyft, Inc.

Dated this 5th day of January, 2015, in Washington, D.C.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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/s/ Andrew T. George
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Counsel for Lyft, Inc.

Dated this 2nd day of January, 2015, in Washington, D.C.