

**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 Allegheny County : A-2014-2415045
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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
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RESPONSE TO PETITION FOR PARTIAL RECONSIDERATION

Protestants, 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., and 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 (hereinafter collectively referred to as “Protestants”), by and through its attorney, Michael S. Henry, Esquire, hereby respond to the Petition for Partial Reconsideration filed by the Applicant, Lyft, Inc., on January 2, 2015, as follows:

1. The averments in this paragraph refer to the Commission’s order of December 18, 2014, which speaks for itself, and are denied to the extent they are inconsistent therewith. Protestants have no information upon which to form an opinion as to the truth falsity of the remaining averments.

2. Protestants strenuously object to the Commission granting further special treatment to the Applicant and further eroding protections provided to the riding public by the Commission’s insurance requirements.

The Commission has already endangered the public by permitting this Applicant to file proof of insurance coverage that is not **continuous**, creating significant gaps in coverage, which will inevitably deprive injured members of the riding public from recovering for injuries arising out of the **maintenance or use** of an authorized vehicle. Applicant’s insurance only provides coverage when its smartphone application is in use. In contrast, every other motor carrier in this Commonwealth provides **continuous** coverage from policy inception date to

policy termination date, which gives them the “ability to respond in damages for liability on account of accidents arising out of the maintenance or use of an authorized vehicle, regardless of whether it is actively providing authorized service.

The Commission has effectively allowed the Applicant to eliminate coverage for a whole category of potential claims arising from the maintenance of an authorized vehicle. Each certified motor carrier in this Commonwealth has a duty to maintain and certify that the vehicles it uses to provide authorized service are safe for operation on the highways. When a carrier violates this duty, it may be held liable for damages arising from its negligent maintenance of an authorized vehicle, even if that vehicle is not actively engaged in the providing authorized service. It is easy to imagine other potential claims that will not be covered because the Commission has excused the Applicant from providing continuous insurance coverage.

Furthermore, by allowing the Applicant to provide insurance only when its smartphone application is in use, the Commission has further endangered the public by making coverage contingent upon the actions of a non-professional driver. There should be no doubt that an authorized vehicle is covered when it is providing authorized service. Yet the Commission has introduced such doubt by eliminating the requirement of continuous coverage and giving the Applicant’s

non-professional drivers the power to determine, through potentially negligent or improper use of the Applicant's smartphone application, when coverage is in effect. Under such circumstance, every claim submitted by an injured party will be subject to review and potential denial on this basis, thereby creating unnecessary litigation for injured parties over coverage issues and denial of legitimate claims.

One example of the serious risk to the public created by the Commission was raised during the hearing in this matter. During testimony, a hypothetical was posed by Protestants' attorney wherein a child was killed by a driver backing out of a driveway after dropping off a passenger and shutting off the smartphone application. Under such circumstance, no coverage would be provided under Applicant's insurance policy because its smartphone application was not in use.

In its Petition for Partial Reconsideration, the Applicant seeks special treatment to allow it to provide insurance coverage that is not primary. Protestants object to such special treatment on the grounds that it creates an unfair competitive advantage to the Applicant over all other motor carriers in the Commonwealth by allowing the Applicant to avoid the expense of providing primary commercial insurance coverage for its authorized service.

The Applicant's duty to provide primary commercial insurance coverage is non-delegable. The Applicant is the regulated entity and is accountable for

compliance with the Commission's regulations. The Applicant must be the sole party responsible for providing proof of insurance to the Commission. The Applicant seeks to be excused from its responsibility for providing primary coverage and instead proposes that the Commission allow a multitude of driver-provided insurance policies as a substitute for its own primary commercial insurance coverage.

The Commission should keep in the mind the practical challenges associated with administering the Applicant's proposal and reject it out of hand. Protestants presume that the Commission would not abandon the filing requirement for proof of insurance and that every insurance carrier covering an authorized vehicle would be required to file a Form E when coverage is effective and a Form K when coverage is cancelled. In light of this requirement, Commission staff would be required to keep track of hundreds or thousands of insurance forms on a continuous basis to ensure that none of the Applicant's vehicles operates without insurance. The significant burdens associated with undertaking this task creates great potential for administrative error and places the public at risk of an uninsured claim.

3. Protestants object to the Applicant's request that it be excused from the requirement that insurance carriers covering the vehicles that provide authorized service be notified that the vehicles are engaged in for hire

transportation services. All private passenger policies contain exclusions for commercial activities. Providing commercial transportation service in a private passenger vehicle without disclosing this fact to the insurance carrier providing coverage on the vehicle amounts to insurance fraud because it increases the insured risk and does not give the insurance carrier a fair opportunity to underwrite that risk.

The Commission can eliminate the potential for insurance fraud by requiring each insurance carrier that covers a vehicle providing authorized service to file proof of insurance with the Commission. The Commission facilitates insurance fraud to the extent it requires less. Unless each driver's insurance carrier files a Form E with the Commission, there is no assurance that the Applicant and the driver are not engaged in fraud that may negate coverage for members of the riding public who sustain injuries arising from the maintenance or use of an authorized vehicle.

There was ample evidence in the record to support this requirement.

4. Protestants hereby incorporate their responses to the foregoing paragraphs as if the same were fully set forth herein at length.

BACKGROUND

5. Admitted.

6. Admitted.

7. Denied. The recommended decisions speak for themselves; therefore the averments in this paragraph are denied to the extent they are inconsistent therewith.

8. Admitted.

9. Denied. The Commission's order and opinion speak for themselves; therefore the averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Commission's insurance regulations require motor carriers to provide primary insurance coverage. In fact, the regulations do not even contemplate any circumstance where any entity other than the regulated entity would provide coverage for authorized vehicles providing authorized service. No explicit provision is necessary because the alternative suggested by the Applicant is absurd. Only a regulated entity can be held accountable for compliance with the Commission's regulations. Shifting the burden of such compliance to any third party is a recipe for disaster and is not in the best interests of the public. By way of further answer, Protestant hereby incorporates their response to the preceding paragraphs as if the same were fully set forth herein by reference.

STANDARD OF REVIEW

10. Denied. The averments in this paragraph contain conclusions of law to which no response is required; therefore the same are denied.

ARGUMENT

11-27. The averments in these paragraphs contain conclusions of law to which no response is required. By way of further answer, Protestants hereby incorporate the averments contained in the foregoing paragraphs as if the same were fully set forth at length. By way of further answer, it is clear that both the Code and the Commission's regulations require primary insurance to cover authorized service. The problem with the Applicant's analysis and the Commission's prior order and opinion is that the Applicant is not truly a "motor carrier" with the meaning of the Code and, as a consequence, the Commission does not have jurisdiction to consider this Petition for Reconsideration.

In finding that it has jurisdiction to consider the Application, the Commission found that vehicle ownership is not required. While true, the critical factor that distinguishes a "motor carrier" from a "broker" is custody or control over a vehicle. A "common carrier by motor carrier" is not required to own or operate a vehicle, but is, as part of its obligations under the Code to assume custody, control and supervision of each vehicle it operates under its certificate of public convenience.

The following statutory definitions are critical to an understanding of the issues presented in this motion. The term "common carrier," is defined in the Public Utility Code, and provides as follows:

Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, **but shall not include** contract carriers by motor vehicles, or **brokers**, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

Emphasis added

Likewise, the definition of “common carrier by motor vehicle,” contained in the Public Utility Code, further clarifies the definition of “common carrier” and provides, in pertinent part:

Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, **whether or not the owner or operator of such motor vehicle**, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property as aforesaid,

Emphasis added.

Finally, because the definition of “common carrier” excludes brokers, the definition of the term “broker” contained in the Public Utility Code provides further clarification of the above terms and provides as follows:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who

sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, **and who does not assume custody as a carrier.**

Emphasis added.

Based on the foregoing, it is clear that the assumption of custody of a vehicle used to provide service as a “common carrier by motor vehicle” is necessary to distinguish it from a mere broker of motor carrier services.

Based on the foregoing, the Commission erred in concluding that it had jurisdiction to grant the Application in this matter because the Applicant is proposing to act as a “broker” and not a “common carrier by motor vehicle” within the meaning of the Public Utility Code.

WHEREFORE, the above Protestants respectfully request this Honorable Commission to adopt the foregoing proposed findings of fact and conclusions of law and proposed order.

Respectfully,


Michael S. Henry

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via First-Class U.S. Mail, in accordance with the requirements of § 1.54 (relating to service by a participant).

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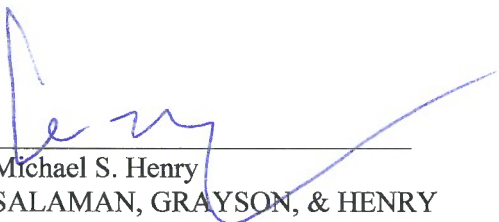
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