**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 12, 2015

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| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Gladys M. Brown |  | |
| 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 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Partial Reconsideration (Petition), filed by Lyft, Inc. (Lyft or Applicant) on January 2, 2015, seeking reconsideration of specified portions of the Opinion and Order entered December 18, 2014 (*December 2014 Order*), relative to the above-captioned proceeding. On January 12, 2015, the Insurance Federation of Pennsylvania (Insurance Federation) and Executive Transportation Company, Inc. (Executive Transportation) each filed an Answer to the Petition.[[1]](#footnote-1)

Additionally before the Commission is the Motion to Strike Executive Transportation’s Answer to the Petition (Motion to Strike),[[2]](#footnote-2) filed by Lyft on January 29, 2015. No Answers have been filed in response to the Motion to Strike.

For the reasons set forth herein, we shall deny the Petition and grant, in part, the Motion to Strike.

**History of the Proceeding**

On April 3, 2014, Lyft filed its Application for experimental service for passenger trips between points in Allegheny County.[[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 Allegheny County, 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.

JB Taxi LLC (JB Taxi), Black Tie Limousine, Concord Limousine, Inc., and Executive Transportation filed Protests to the Application. The Applicant filed Preliminary Objections which sought dismissal of each of the Protestants on May 29, 2014. By Interim Orders dated June 25, 2014, Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson dismissed the Preliminary Objections seeking dismissal of JB Taxi and Executive Transportation. On June 21, 2014, the Applicant filed Petitions for Interlocutory Review and Answer to a Material Question, which sought review of the Interim Orders dismissing the Applicant’s Preliminary Objections related to JB Taxi and Executive Transportation. By Orders entered on August 14, 2014, at Docket Nos. P-2014-2433428 and P-2014-2433383, the Commission declined to answer the material question.

By Initial Decisions, issued on June 27, 2014, the ALJs sustained the Preliminary Objections regarding Concord Limousine and Black Tie Limousine, and dismissed the Protests of Concord Limousine and Black Tie Limousine.

The Pennsylvania Association for Justice and the Insurance Federation also filed Protests. The Applicant filed Preliminary Objections to the Protests asserting the Protestants lacked standing. By Initial Decision, issued on June 27, 2014, the ALJs sustained the Applicant’s Preliminary Objections. By Order entered August 14, 2014, the Commission reversed the dismissal of the Insurance Federation’s Protest.

Evidentiary hearings were held on August 27, 2014, September 3, 2014, and September 10, 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. Executive Transportation was 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.[[4]](#footnote-4) On September 15, 2014, Lyft, the Insurance Federation, and JB Taxi filed Briefs. Executive Transportation filed a Brief on September 16, 2014. The record was closed by Order dated September 17, 2014.

By Recommended Decision, issued on October 9, 2014, ALJs Long and Watson denied the Application. The Applicant and Executive Transportation filed Exceptions to the Recommended Decision on October 24, 2014, and October 27, 2014, respectively. On November 3, 2014, Lyft, Executive Transportation, the Insurance Federation, and JB Taxi filed Replies to Exceptions.

In the *December 2014 Order*, we granted Lyft’s Exceptions, in part, reversed the Recommended Decision, and granted the Application subject to compliance with certain terms and conditions.

As previously noted, Lyft filed the instant Petition on January 2, 2015.[[5]](#footnote-5) On January 12, 2015, the Insurance Federation and Executive Transportation each filed an Answer to the Petition.

By Opinion and Order, entered on January 15, 2015, we granted the Petition within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending further review of, and consideration on, the merits.

Consistent with the directives in our *December 2014 Order*, Lyft filed a Compliance Tariff and a Compliance Plan on January 21, 2015. These filings will be evaluated in a separate Commission Order.

As previously noted, Lyft filed a Motion to Strike on January 29, 2015. On February 2, 2015, the Commission issued a Secretarial Letter indicating that the Parties to this proceeding were required to file any Answer to Lyft’s Motion to Strike on or before February 6, 2015. No Answers have been filed.

On February 2, 2015, counsel for Executive Transportation filed a letter with Chairman Robert F. Powelson regarding Lyft’s Compliance Plan.[[6]](#footnote-6)

**Discussion**

**Legal Standards**

We note that any issue or argument that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation 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)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id*. at \*13.

***December 2014 Order***

In the *December 2014 Order*, we granted Lyft’s Application subject to compliance with certain terms and conditions. In doing so, we stated that the Application was a request for motor carrier service under our experimental service Regulation at

52 Pa. Code § 29.352, because Lyft was proposing to provide a new and innovative transportation network service in Allegheny County. We indicated that our experimental service Regulation permits approval of this type of motor carrier service not currently contemplated by our Regulations on a short-term basis of two years. We also indicated that, consistent with our ability under the Regulation to set appropriate parameters for experimental service, we would impose certain terms and conditions and also waive certain Regulations that did not apply to the transportation network service business model. *December 2014 Order* at 6. As our guiding principle, we wanted to ensure that the provision of service was done in a safe manner with appropriate insurance coverage and, accordingly, many of the terms and conditions in the *December 2014 Order* pertain to insurance coverage. *Id*. at 7.

Some of these insurance coverage terms and conditions are the subject of

Lyft’s Petition. Initially, we noted that in its Application, Lyft proposed to provide one level of insurance for Stage 1, and another level of insurance for Stages 2 and 3.[[7]](#footnote-7) We indicated that, for Stage 1, Lyft proposed to provide contingent coverage (meaning coverage would apply if the driver’s insurance declined 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, we indicated that Lyft proposed to provide primary coverage of $1 million in liability coverage per incident that would 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. *December 2014 Order* at 43.

In evaluating Lyft’s proposed insurance coverage, we agreed with the ALJs’ finding that Lyft’s proposed coverage during Stage 1 did not comply with

52 Pa. Code § 32.11, because Lyft was proposing only “contingent” coverage. We also agreed with the ALJs’ conclusion that Lyft’s proposal related to notification and education of its drivers with respect to personal auto coverage was inadequate, because Lyft’s drivers were not required to notify their personal auto insurers of their intent to operate in Lyft’s service. *December 2014 Order* at 42. As a result of our determinations, we ordered that, prior to receiving experimental authority from the Commission, Lyft was required to meet several conditions, consistent with our *ETA Order*.[[8]](#footnote-8) *December 2014 Order* at 43.

First, we required that Lyft’s insurance during Stages 1 through 3 must be the primary insurance coverage, *regardless* of any insurance coverage held by Lyft’s drivers. We concluded that, “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.” *Id*. at 43.

Second, with regard to driver insurance disclosure, we required 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. *Id*. at 44. We noted our concern 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 was not being used to provide transportation network service. In adopting this second requirement, we concurred with the Insurance Federation that the notification requirement “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.” *Id*. at 44. We stated that, in the absence of a notification process, a driver could potentially jeopardize his personal coverage, as well as car loans or leases, if his insurer found the service was commercially-related. We were also concerned that a Lyft driver could be exposed to significant personal liability in the event of an accident or claim arising from the personal use of the vehicle. *Id*. We found that the notification requirement was an appropriate measure to ensure verification of coverage limits. *Id*. at 44-45.

Moreover, we noted that, in the *ETA Order*, we had 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.

*December 2014 Order* at45(quoting *ETA Orde*r at 5).

Accordingly, we directed Lyft to 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. *December 2014 Order* at 45. We stated that, consistent with 52 Pa. Code § 32.11(a), Lyft could only operate if its insurance carrier provided acceptable evidence of insurance (a Form E Certificate of Insurance) to the Commission. *December 2014 Order* at 45-46 (citing *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”)). We also emphasized that it is Lyft, as the regulated entity, that must have acceptable evidence of insurance on file with the Commission. *December 2014 Order* at 46 (citing *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)).

**Petition for Partial Reconsideration**

**Petition and Answers to the Petition**

In its Petition, Lyft requests that we reconsider the following two conditions in the *December 2014 Order:* (1) that Lyft is required to maintain primary insurance coverage during Stages 1 through 3; and (2) that Lyft is required to direct its drivers to notify their insurers of their intent to operate in Lyft’s service.[[9]](#footnote-9)

First, Lyft asks the Commission to reconsider its interpretation of Section

32.11(b),[[10]](#footnote-10) so that a driver’s personal or commercial policy would satisfy the Regulation’s requirements where the driver’s insurance policy affirmatively recognizes the driver’s participation in transportation network company (TNC) activity. Lyft indicates that insurance companies in eight states, including Pennsylvania, now offer or are in the process of offering policies designed for drivers who intend to participate in TNC activity. Lyft avers that, for these reasons, the Commission should reassess whether Section 32.11(b) of the Commission’s Regulations, 52 Pa. Code § 32.11(b), requires Lyft’s insurance to be primary. Petition at 2.

Lyft states that the Commission required it to maintain primary insurance during Stage 1 without considering the arguments in Lyft’s Exceptions that Section 32.11(b) does not require any entity to provide primary coverage, as opposed to contingent or excess coverage. Lyft contends that the *December 2014 Order* does not cite any authority or offer any analysis in support of the conclusion that Section 32.11(b) requires primary coverage and does not permit contingent coverage. Lyft argues that the plain language of Section 32.11(b) does not support such a conclusion. Petition at 6. Lyft also argues that the language in Section 32.11(b) is limited to setting forth the terms of insurance coverage without specifying how the coverage will be provided and that it would be consistent with the terms of Section 32.11(b) to permit an individual TNC-specific policy to satisfy the coverage requirements. Petition at 7. According to Lyft, a driver’s TNC-specific coverage would then be primary to Lyft’s coverage, which would then become excess until the legally required policy limits are met. Lyft avers that, if the record is inadequate for the Commission to address this issue, the Commission should grant re-hearing and re-open the record to take evidence on this issue. *Id*. at 2.

Lyft asserts that the insurance Regulations should account for and encourage new TNC-specific insurance products. Lyft believes that Section 32.11(b) should be read in a manner that focuses on the terms of coverage in order to promote market-based products and efficiently serve a need. Lyft states that Pennsylvania should follow the model of other jurisdictions, such as Colorado and California, that are not requiring the TNCs themselves to provide primary coverage at all times if primary coverage exists. Petition at 8. According to Lyft, by reconsidering its interpretation of Section 32.11(b), the Commission can ensure that Pennsylvanians receive the benefits of a market-based insurance system without risking a loss of primary insurance coverage. Petition at 8-9.

In its Answer, the Insurance Federation states that the Commission has correctly protected the public by establishing insurance requirements that cover the amount of coverage and the manner in which coverage will be provided. Insurance Federation’s Answer at 3. The Insurance Federation avers that, contrary to Lyft’s contention, no TNC-specific insurance policies are in place in Pennsylvania and none have been filed for regulatory approval. The Insurance Federation also avers that the Commission’s *December 2014 Order* does not prevent new TNC-specific insurance products in Pennsylvania, and that the Order properly recognizes that such an option will require special consideration and provisions. For example, the Insurance Federation questions how a TNC would satisfy Section 32.11(a) of the Commission’s Regulations, 52 Pa. Code § 32.11(a),[[11]](#footnote-11) such as the requirement for filing a Form E, and how Lyft would monitor its drivers’ compliance with the insurance requirements on a continuous basis. Insurance Federation’s Answer at 4. The Insurance Federation indicates that neither Lyft’s Application nor the record address the type of TNC-specific insurance coverage that Lyft is now requesting the Commission to approve. *Id*. at 4-5. The Insurance Federation observes that, since such proposed insurance coverage was not part of the record, the ALJs, the Commission, and the other Parties to this proceeding did not have an opportunity to evaluate it. *Id*. at 5.

Additionally, the Insurance Federation disagrees with Lyft’s analysis of Section 32.11(b) of the Commission’s Regulations. The Insurance Federation asserts that Lyft ignores the language in Section 32.11(a), which requires a certificate of insurance to be filed by an insurer, in the singular. The Insurance Federation also indicates that Section 512 of the Code, 66 Pa. C.S. § 512, provides the Commission with discretion over insurance matters in order to protect the public. The Insurance Federation states that the point of requiring insurance is to have a clear and verifiable method for ascertaining coverage, and the Commission has discretion to establish the means to achieve this objective. The Insurance Federation avers that Lyft has not stated how the public would be protected by the insurance it now proposes or how its proposal would work. The Insurance Federation believes that the Commission’s primary coverage requirement protects the public in a pragmatic and verifiable manner. Insurance Federation’s Answer at 5.

In response, Executive Transportation avers that both the Code and the Commission’s Regulations require primary insurance coverage for authorized service. Executive Transportation’s Answer at 7, 8. Executive Transportation asserts that the Regulations do not even contemplate that any entity other than the regulated carrier would provide coverage for vehicles providing regulated service, as only the regulated entity can be held accountable for compliance with the Commission’s Regulations. *Id*. at 7.

Executive Transportation also asserts that, if the Commission permits Lyft to provide contingent coverage, as it proposes, this will create an unfair competitive advantage for Lyft over all other motor carriers in Pennsylvania, because Lyft will be able to avoid the expense of providing primary commercial insurance coverage for authorized service. *Id*. at 4. Executive Transportation states that a regulated motor carrier’s duty to provide primary commercial insurance coverage is non-delegable and, accordingly, Lyft is solely responsible for providing proof of insurance to the Commission. *Id*. at 4-5. Executive Transportation argues that there are practical issues with administering Lyft’s proposal to have driver-provided insurance policies substitute for primary coverage provided by Lyft. For instance, Executive Transportation avers that, under the Commission’s current filing procedure for proof of insurance, every insurance company covering an authorized vehicle would be required to file a Form E when coverage is effective and a Form K when coverage is cancelled. Consequently, Commission staff would be required to track voluminous amounts of insurance forms on a continuous basis to ensure that none of the vehicles are operating without insurance. *Id*. at 5.

Executive Transportation further objects to the level of insurance coverage that the Commission authorized in the *December 2014 Order* on the basis that Lyft’s insurance will only provide coverage when the Lyft app is in use, while other certificated motor carriers in Pennsylvania are required to maintain continuous coverage from the insurance policy inception date to the policy termination date. Executive Transportation’s Answer at 2-3. Executive Transportation also avers that the Commission’s Order permits Lyft to eliminate coverage for any potential claims arising from the maintenance of an authorized vehicle, even if that vehicle is not engaged in providing authorized service. *Id*. at 3. Executive Transportation believes that the Commission’s determination in the *December 2014 Order* places the public in danger by making coverage dependent on the actions of a Lyft driver and poses an uncertainty regarding whether an authorized vehicle is covered when it is providing authorized service. Executive Transportation asserts that such uncertainty will result in claims submitted by an injured party being subject to review, potential denial, and unnecessary litigation. Executive Transportation’s Answer at 4.

Second, Lyft avers that the Commission should reconsider its directive that Lyft’s drivers notify their insurers of their intent to operate in Lyft’s service. Lyft contends that this insurance disclosure requirement is not supported by substantial evidence in the record. Petition at 9. Lyft states that the Commission speculated that the driver’s conduct during Stages 1 through 3 could impact the driver’s insurance coverage when the driver is using the vehicle for purely personal use. *Id*. Lyft also states that the Commission expressed concern that the use of a TNC application would void the driver’s insurance policy and enable the insurer to deny coverage for events that occur when the driver is using the vehicle for personal use. Petition at 9 (citing *December 2014 Order* at 44). Lyft argues that there is no evidence in the record to support the conclusion that using a TNC application impacts insurance coverage when the driver is using the vehicle for personal use. Petition at 9. Lyft asserts that several witnesses in this proceeding testified about the operation of a livery exclusion, but all of these witnesses discussed the livery exclusion in terms of excluding coverage and not in terms of voiding policies. *Id*. at 10 (citing Tr. at 132, 507, 521, 522, 535, and 537). According to Lyft, the only reference to the idea that using a TNC application could void a driver’s policy was addressed by the Insurance Federation’s witness, Mr. Greer, in response to questions regarding underwriting risk. Petition at 10 (citing Tr. at 463).

Additionally, Lyft argues that the insurance disclosure requirement in the *December 2014 Order* violates Lyft’s First Amendment rights. Petition at 11. Lyft avers that the First Amendment prohibits a government agency from compelling commercial speech unless: the compelled speech consists 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. *Id*. (citing *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985)). Lyft also avers that the disclosure must show that the harm to be avoided by the disclosure is “potentially real, not purely hypothetical.” Petition at 12 (quoting *Ibanez v. Florida Dep’t of Bus. & Prof’l Regulation, Bd. of Accountancy*, 512 U.S. 136, 146 (1994)). Lyft contends that the Commission’s insurance disclosure requirement is compelled commercial speech, and the Commission has not shown that the required disclosure is justified and not unduly burdensome. Petition at 11-12. Lyft asserts that the *December 2014 Order* does not meet these legal standards because Lyft will be guaranteeing Stage 1 coverage, whether primary or contingent, and there is no evidence of an insurance coverage gap when drivers are using their vehicles for personal use. As such, Lyft opines that the insurance disclosure requirement is not reasonably related to the protection of anyone, and to the extent the disclosure requirement protects anyone, it protects insurance companies rather than consumers. Petition at 12.

The Insurance Federation responds that the Commission has properly protected the public by requiring Lyft to direct its drivers to notify their personal insurers of their status as Lyft drivers. Insurance Federation’s Answer at 6. The Insurance Federation notes that Lyft is not making a new argument, as this notice requirement was first imposed in the Commission’s prior *ETA Order*. Insurance Federation’s Answer at 6. The Insurance Federation avers that the testimony of its witness, Mr. Greer, clearly explained that a Lyft driver might face cancellation or other exposure and ramifications, and Lyft did not rebut this testimony. The Insurance Federation agrees with the Commission that the notification requirement ensures that a driver’s services with Lyft do not result in lapsed personal coverage and uninsured motorists operating on highways. Insurance Federation’s Answer at 6. The Insurance Federation also asserts that the notice requirement does not violate a First Amendment right, as the disclosure requirement promotes protection of the public. *Id*. at 7.

In its Answer, Executive Transportation avers that there is ample evidence in the record to support the disclosure requirement at issue. Executive Transportation states that all private passenger insurance policies contain exclusions for commercial activities. Executive Transportation contends that providing commercial transportation service in a private passenger vehicle without disclosing this information to an insurance carrier providing coverage on the vehicle constitutes insurance fraud, because it increases the risk for the insured party without providing the insurance carrier with an opportunity to underwrite the risk. Executive Transportation’s Answer at 6.

**Disposition**

As stated above, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and novel arguments, or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. The second step of the *Duick* analysis is therefore to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument, or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Based upon our evaluation of the record and the parties’ positions in each particular case, we will determine if there is a sufficient basis for us to exercise our discretion to amend or rescind a prior Order, in whole or in part.

Based on our review of the record, the Petition, and the Answers thereto, we will deny Lyft’s Petition. First, with respect to Lyft’s arguments that we should reconsider our determination requiring Lyft to maintain primary insurance coverage, Lyft has failed to present any new or novel arguments that warrant a modification of our *December 2014 Order*. In its Petition, Lyft reiterates the arguments it made in its Exceptions and throughout this proceeding. Lyft has consistently proposed to maintain contingent coverage during Stage 1 to cover situations where the driver’s personal insurance carrier declines coverage. In its Exceptions, Lyft argued that it should not be required to provide primary insurance coverage during Stage 1, and that such a requirement was inconsistent with Section 32.11 of our Regulations. *See*, Lyft’s Exceptions at 6, 7, 12. We considered and addressed Lyft’s arguments in the *December 2014 Order*. We agreed with the ALJs’ determination that Lyft’s proposed coverage during Stage 1 did not comply with Section 32.11 because Lyft was proposing only “contingent” coverage. *December 2014 Order* at 42. We required that Lyft’s insurance during Stages 1 through 3 must be the primary insurance coverage. *Id*. at 43.

While we did not expressly mention TNC-specific insurance policies, we determined that Lyft’s insurance must be primary, *regardless* of any insurance coverage held by Lyft’s drivers. We concluded that, “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.” *Id*. We also emphasized that it is Lyft, as the regulated entity, that must have acceptable evidence of insurance on file with the Commission. *Id*. at 46 (citing *Love-Diggs v. Tirath*, *supra*; *Metro Transportation Co., supra*). Based on a reading of this case law and the language in Section 32.11(a) and (b), it is clear that it is the responsibility of the regulated “common carrier,” as stated in the Regulation, and not the individual driver, to maintain insurance on each vehicle and to file a Form E evidencing such insurance coverage. Furthermore, requiring Lyft to maintain primary insurance is within our authority under Section 512 of the Code, which pertains to our power to require insurance, and provides that “[t]he commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public….” 66 Pa. C.S. § 512.

Lyft’s request for reconsideration in order to permit an individual TNC-specific policy to satisfy the coverage requirements and to be primary to Lyft’s insurance is a slight variation on Lyft’s proposal to provide contingent coverage. As the Parties note, there is no evidence in the record regarding TNC-specific policies, either in Pennsylvania, or in other states. Lyft has asked that we re-open the record to take evidence on this issue. In evaluating Lyft’s request, we find that Lyft has not met the standards for reopening the record, as set forth in Section 5.571 of our Regulations,

52 Pa. Code § 5.571.

Pursuant to Section 5.571, the Commission may reopen the record to receive additional evidence “if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.” 52 Pa. Code § 5.571(d). In its Petition, Lyft indicates that other states, such as California, are enacting Regulations to permit TNCs to satisfy insurance requirements through TNC insurance maintained by the driver. *See*, Petition at 8. Lyft also cites to an Erie Insurance press release dated November 18, 2014, which states that Erie Insurance is initially offering coverage in Illinois and Indiana to ensure that a driver for TNC services has insurance coverage during each part of the trip, including before, during, and after the hired ride. *See*, Petition at 8. While this information may indicate that, since the hearing in this case, some states are moving toward new types of insurance policies to cover TNC services, this information is too general to qualify as “conditions of fact” that would justify re-opening the record. Moreover, none of this information indicates that there are any TNC-specific policies in Pennsylvania, nor does this information impact the current Regulations and laws in Pennsylvania under which this Commission operates. Accordingly, we find no basis for reopening the record in this case or for reconsidering our determination that Lyft must maintain primary insurance coverage, regardless of the insurance coverage held by its drivers.

Lyft’s second argument in its Petition - that the Commission should reconsider its directive that Lyft’s drivers notify their insurers of their intent to operate in Lyft’s service - was not previously raised by Lyft in the context of this proceeding. The ALJs made a finding that, “[u]nless mandated by the Commission, the Applicant does not propose to direct its drivers to notify their personal auto insurers, in writing, of their intent to operate in Lyft’s service or to maintain a copy of any such notices from their drivers for any period of time.” R.D. at 8. However, because the ALJs denied the Application, they did not place an insurance notification condition on Lyft. While we find that it is appropriate to consider Lyft’s second argument, we conclude that Lyft has not provided us with a sufficient basis to modify our *December 2014 Order*.

The insurance disclosure requirement in our *December 2014 Order* is supported by substantial evidence. The Insurance Federation’s witness, Mr. Greer testified at length regarding Lyft’s proposed insurance coverage and policies, including Lyft’s decision not to instruct its drivers to notify their personal insurers that they are operating as Lyft drivers. *See*, Tr. at 462. Mr. Greer specifically stated that, when an individual policy holder becomes a Lyft driver, “it could result in a policy holder being terminated from their personal auto insurer, which I think that they would want to know before it’s too late.” *Id*. at 463. Mr. Greer also testified that a Lyft driver may experience personal financial liability as a result of potential gaps in coverage between the coverage proposed by Lyft and exclusions in the driver’s personal insurance, such as a livery exclusion. *Id*. at 464, 507, and 513. Further, Mr. Greer explained that most individuals without commercial experience, such as the non-professional Lyft drivers, would not likely be aware of their exposure or know which questions to ask to determine their exposure. *Id*. at 464, 513. We find that the testimony in the record supports the disclosure requirement set forth in our *December 2014 Order*. Lyft has not persuaded us of any reason to alter our conclusion that the notification requirement is an appropriate measure to ensure verification of coverage limits and to ensure transparency, particularly given the experimental nature of the proposed service.

Moreover, we do not find any merit in Lyft’s position that the insurance disclosure requirement in the *December 2014 Order* violates Lyft’s First Amendment rights. The cases that Lyft cites pertain to restrictions on advertisements by attorneys, as well as additional disclosure requirements that may be placed on such advertisements. The legal standard enunciated in the cases is that speech disclosure requirements must be “reasonably related to the state’s interest in preventing the deception of consumers” and cannot be “unjustified or unduly burdensome” in a manner that might violate the First Amendment by chilling protected commercial speech. *Zauderer, supra*, at 651. We conclude that the requirement that Lyft drivers engage in a private communication with their personal insurers regarding their new status as Lyft drivers is distinguishable from a restriction on commercial speech in a public forum. Lyft’s arguments that the disclosure requirement in the *December 2014 Order* is unjustified, unduly burdensome, and not reasonably related to the protection of consumers also fails. We clearly expressed in our *December 2014 Order* that the notification requirement provides a public safety and driver protection benefit and ensures that the driver’s services with Lyft do not result in lapsed personal coverage and uninsured motorists on highways.[[12]](#footnote-12) This disclosure requirement is part of our responsibility and authority to ensure the safety of the traveling public.

**Motion to Strike**

In its Motion to Strike, Lyft avers that Executive Transportation’s Answer to its Petition should be stricken because the Answer seeks affirmative relief that is outside the scope of Lyft’s Petition. Lyft states that Executive Transportation only nominally addresses the issues in Lyft’s Petition before raising other arguments that do not relate to the Petition. Motion to Strike at 2. Lyft notes Executive Transportation’s objections to certain determinations in the *December 2014 Order* that Lyft did not address in its Petition, including Executive Transportation’s averments that the Commission lacked jurisdiction to grant Lyft’s Applications and that the Commission erred by not requiring Lyft to provide continuous insurance coverage for its drivers. Lyft asserts that, due to the nature of Executive Transportation’s averments, Executive Transportation’s filing should be treated as a Petition for Reconsideration, rather than as an Answer to Lyft’s Petition. Motion to Strike at 3. Lyft contends that, when properly treated as a Petition for Reconsideration, Executive Transportation’s filing is untimely under 52 Pa. Code § 5.572(c), as it was required to be filed within fifteen days of the entry of the *December 2014 Order* – on January 2, 2015. Motion to Strike at 3-4. For these reasons, Lyft requests that Executive Transportation’s filing be stricken in its entirety. *Id*. at 4.

As noted by Lyft, Executive Transportation has made additional arguments, not discussed above, that are not responsive to the subject matter of the Petition before us. These arguments would have been more appropriately raised in a petition for reconsideration or other relief under Section 5.572 of our Regulations, rather than in a responsive filing. Nevertheless, even if Executive Transportation had properly raised these arguments, these arguments would not have satisfied the *Duick* standards. Executive Transportation argues that Lyft is proposing to act as a broker and not as a common carrier by motor vehicle. We previously considered this argument in our *December 2014 Order* anddeclined to consider the proposed service as a broker of transportation. Instead, we agreed with the analysis of the ALJs that the innovative nature of the proposed service permits an analysis as an experimental service under Section 29.352 of our Regulations. *December 2014 Order* at 17.

Executive Transportation also objects to the level of insurance coverage that the Commission authorized in the *December 2014 Order* on the basis that Lyft’s insurance will only provide coverage when the Lyft app is in use, while other certificated motor carriers in Pennsylvania are required to maintain continuous coverage from the insurance policy inception date to the policy termination date. Executive Transportation’s Answer at 2-3. Executive Transportation believes that the Commission’s determination creates an uncertainty regarding whether an authorized vehicle is covered, which will result in claims submitted by an injured party being subject to review, potential denial, and unnecessary litigation. Executive Transportation’s Answer at 4. We previously considered these arguments in our prior Order, as they were raised in Executive Transportation’s Replies to Exceptions, and we determined that Lyft would be required to provide primary insurance coverage during Stages 1 through 3. *December 2014 Order* at 41, 43. Accordingly, we decline to revisit these arguments herein. Nevertheless, as some of Executive Transportation’s averments were responsive to Lyft’s Petition, we have considered those averments and, therefore, we will not strike Executive Transportation’s Answer in its entirety.

**Conclusion**

Based upon our review of the Petition and the Answers thereto, the record in this proceeding, and the applicable law, we shall deny Lyft’s Petition and grant Lyft’s Motion to Strike, in part, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Partial Reconsideration filed by Lyft, Inc. on January 2, 2015, seeking reconsideration of the Opinion and Order entered on December 18, 2014, is denied, consistent with this Opinion and Order.

2. That the Motion to Strike Executive Transportation Company, Inc.’s Answer to the Petition filed by Lyft, Inc. on January 29, 2015, is granted, in part, consistent with this Opinion and Order.

 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 12, 2015

ORDER ENTERED: February 12, 2015

1. Various additional Protestants are also listed on Executive Transportation’s Answer, because Executive Transportation’s counsel filed the same document in both this proceeding and Lyft’s Statewide Application proceeding, at Docket No. A‑2014‑2415047, on behalf of various Protestants. However, Executive Transportation is the only one of those Protestants who is a party to this Allegheny County Application proceeding. [↑](#footnote-ref-1)
2. Lyft’s Motion to Strike lists various additional Protestants, as Lyft’s counsel filed the same Motion in both this proceeding and Lyft’s Statewide Application proceeding, at Docket No. A‑2014‑2415047, in which various Protestants are Parties. However, Executive Transportation is the only one of those Protestants who is a party to this Allegheny County Application proceeding.

   [↑](#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. The hearing was a joint proceeding for both this Application and Lyft’s Application for statewide authority at Docket No. A-2014-2415047. [↑](#footnote-ref-4)
5. The Petition Lyft filed on January 2, 2015, did not contain a Certificate of Service or other indication that the Parties to this proceeding had been served with the Petition. On January 5, 2015, Lyft re-filed the Petition and included a Certificate of Service as well as a Verification Statement. [↑](#footnote-ref-5)
6. In the letter, Executive Transportation states that the letter will “supplement” its Answer to Lyft’s Petition. We will not consider this letter herein, because our Regulations do not permit the filing of a supplement to an Answer well beyond the deadline for filing an Answer. [↑](#footnote-ref-6)
7. Consistent with our *December 2014 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.

   [↑](#footnote-ref-7)
8. *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) (*ETA Order*). In the *ETA Order*, we approved the application contingent upon Lyft meeting specific insurance and tariff requirements. [↑](#footnote-ref-8)
9. In its Compliance Plan, Lyft indicates that it has obtained primary insurance coverage for Stage 1 and that it will comply with the notification requirement at issue. Nevertheless, Lyft notes in its Compliance Plan that it has asked the Commission to reconsider both of these conditions by filing the instant Petition. Compliance Plan at 3, 4 nn. 3, 4. [↑](#footnote-ref-9)
10. Section 32.11(b) provides as follows:

    (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](https://www.lexis.com/research/buttonTFLink?_m=32ee49c5a98c01ee67530e8e8cd44485&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b52%20Pa.%20Code%20%a7%2032.11%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=1&_butInline=1&_butinfo=75%20PACS%201701&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAl&_md5=523ae2cfe262b8c939d3d33e217831de) -- [1799.7](https://www.lexis.com/research/buttonTFLink?_m=32ee49c5a98c01ee67530e8e8cd44485&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b52%20Pa.%20Code%20%a7%2032.11%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=2&_butInline=1&_butinfo=75%20PACS%201799.7&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAl&_md5=c5bc097db3ed6206ab09dd06e7b86837) (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](https://www.lexis.com/research/buttonTFLink?_m=32ee49c5a98c01ee67530e8e8cd44485&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b52%20Pa.%20Code%20%a7%2032.11%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=3&_butInline=1&_butinfo=75%20PACS%201711&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAl&_md5=7700f04f35b13a25ea4d9865686f253b) (relating to required benefits). [↑](#footnote-ref-10)
11. Section 32.11(a) states the following:

    (a) A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in

    § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.  
     [↑](#footnote-ref-11)
12. It also appears that the notification requirement is not unduly burdensome. As we stated in the *ETA Order*, Lyft provided documentation to Commission staff regarding collision/comprehensive insurance coverage and notification. That documentation indicated that Lyft requires its drivers to notify their insurers that they are driving for Lyft in order to avail themselves of comprehensive/collision coverage under Lyft’s policy. *ETA Order* at 5 n. 4. [↑](#footnote-ref-12)