

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

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 **Public Meeting - May 19, 2015**
2415045 – LAW
Docket Nos. A-2014-2415045
P-2014-2442001, A-2014-2415047

Petition of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette for an Interim Emergency Order

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

DISSENTING STATEMENT OF
COMMISSIONERS PAMELA A. WITMER AND JAMES H. CAWLEY

Before the Pennsylvania Public Utility Commission (Commission) is the *Petition for Reconsideration and Supersedeas Regarding Propriety Information Claims* (collectively, "Petition") made by Lyft, Inc. (Lyft). The Petition was filed following the Commission's denial of Lyft's Petition for Interlocutory Review on October 23, 2014, where the Commission determined that the trip data at issue was not proprietary information and therefore was subject to disclosure. The Petition before us today was opposed by Kim Lyons and PG publishing, Inc. d/b/a/ The Pittsburgh Post-Gazette, entities that are not parties to this proceeding. While the majority denies Lyft's Petition, thus unsealing the record and making Lyft's aggregate trip data publicly available 10 days following the entry date of this Order, we disagree with the majority's conclusion that aggregate trip data provided by Lyft in Allegheny County should be publicly disclosed.

Regarding the treatment of proprietary information, our regulations state, in part, that:

A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code § 5.365.

Here, the sole factual information at issue involves the aggregate number of rides Lyft provided in Allegheny County during designated time periods. While we agree that the information at issue does not

include such nuances as the start time, duration, destination, mileage, charges and other details of these rides, we believe that publicly disclosing the aggregate number of rides given by Lyft in Allegheny County at certain time intervals is confidential and will allow Lyft's competitors to gain information that can (and most likely will) be used to substantially harm Lyft and its operations in the future.

This interpretation was confirmed by two of our Administrative Law Judges (ALJs) in a companion Complaint proceeding regarding this very issue. In fact, an Interim Protective Order has been granted in the aforementioned Complaint proceeding (Docket No. C-2014-2422713). The findings of ALJs Long and Watson, issued in December of 2014, are particularly compelling in our consideration of this matter. They stated, in pertinent part:

[W]e find that Lyft's position that it will suffer competitive disadvantage, that the information is developed at a cost, and that the information has value to Lyft's competitors is supported by Mr. Okpaku's affidavit. Further, it is now clear that the information is not generally shared by transportation network companies.

All of these factors both individually and collectively illustrate why Lyft has met its burden to show that the trip data in question is proprietary in nature and should be afforded confidential treatment under a protective order, as we do for other proprietary information, even when amassed in the aggregate, that would be of value to a Company's competitors and whose disclosure would substantially harm a Company.¹ Unfortunately, as a result of today's decision, this information is set to be made public ten days following the entry date of this Order.

At this juncture, we believe that the Commission should err on the side of caution and properly protect this information that Lyft seeks to be treated as confidential under our regulations. Had the Commission chosen to grant Lyft's protective order, parties to the case would still have access to the information in accordance with a properly executed confidentiality disclosure agreement. In doing so, both interests articulated in this case would have been balanced.

For these reasons, we dissent.

DATE: May 19, 2015


PAMELA A. WITMER
COMMISSIONER


JAMES H. CAWLEY
COMMISSIONER

¹ See, e.g., *The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink Petition for Protective Order Regarding 2011 Annual Price Cap Filing*, Docket Nos. P-2011-2269403, R-2011-2258325 (Order entered Dec. 1, 2011). See also *Retail Electricity Choice Activity Reports*, Docket No. L-00070184 (confirming that information filed related to individual EGS market share be kept confidential).