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May 22, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: 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 Between Points in Allegheny County, PA - Docket No. A-2014-2415045

Petition of Kim Lyons and PG Publishing, Inc d/b/a The Pittsburgh Post-Gazette for an Interim Emergency Order - Docket No. P-2014-2442001

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 - Docket No. A-2014-2415047

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Lyft, Inc. is the Petition for Stay or Supersedeas for the above-referenced proceedings. Copies will be provided as indicate on the Certificate of Service.

Respectfully submitted,


Devin Ryan

DTR/jl
Enclosures

Rosemary Chiavetta, Secretary
May 22, 2015
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cc: Certificate of Service
Eric A. Rohrbaugh

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

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Date: May 22, 2015


Devin T. Ryan

**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 Between Points in Allegheny County, PA

Docket No. A-2014-2415045

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

Docket No. P-2014-2442001

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

Docket No. A-2014-2415047

PETITION FOR STAY OR SUPERSEDEAS

Pursuant to Pa. R.A.P. 1781(a) and 52 Pa. Code §§ 3.2 and 5.572, Lyft, Inc. (“Lyft”) respectfully requests an immediate stay or supersedeas of the Pennsylvania Public Utility Commission’s (“Commission”) May 19, 2015 Order Denying Lyft’s Petition for Reconsideration and the Commission’s October 23, 2014 Order Regarding Proprietary Information Claims. For reasons explained in this below, a stay is necessary to prevent irreparable harm to Lyft.

INTRODUCTION

1. Confronting an issue of first impression, on October 23, 2014, the Commission broke new ground and became the first body to rule that Lyft’s trip data does not constitute propriety information and ordered that the record in this case be unsealed (the “October 23 Order”). It then recently upheld that ruling by denying Lyft’s Petition for Reconsideration on

May 19, 2015 (the “May 19 Order”). In its denial of reconsideration, the Commission stated that its order would become effective within ten days of its entry. May 19 Order, p. 15. Thus, as of now, Lyft’s trip data may be subject to disclosure as of May 29, 2015.

2. Lyft intends to pursue all available remedies to avoid an irreparable, unnecessary, and unjustified invasion of its proprietary information. The disclosure of Lyft’s trip data to its competitors is a bell that cannot be unrung. In light of this unavoidable reality, Lyft respectfully requests a stay of the October 23 Order and May 19 Order until it is able to pursue all available process to defend its confidential information.

ARGUMENT

3. A stay is appropriate and necessary where a party demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4) issuance of the stay will not adversely affect the public interest. *See Pa. P.U.C. v. Process Gas Consumers Grp.*, 467 A.2d 805 (1983). Further, the Commission has observed that:

[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our order will have pending appeal.

Pa. P.U.C. v. Makovsky Brothers, Inc., 53 Pa. P.U.C. 510, 511 (1979). This language could find no better expression than here.

4. The effect of the requested stay order in this instance is dispositive to the issue at hand. That is, if the disclosure of Lyft’s trip data is not stayed while Lyft seeks further review of the decision authorizing its disclosure, then the trip data may be disclosed immediately, depriving Lyft of any meaningful access to judicial process. This alone justifies the stay.

5. The four factors considered for grants of stays do as well.

I. Lyft is likely to prevail on the merits of its appeal.

6. The Commonwealth Court is empowered to reverse adjudications of this Commission where constitutional rights were violated, an error of law was committed, or where necessary findings of fact are not supported by substantial competent evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Nat'l Fuel Gas Distrib. Corp. v. Pa. P.U.C.*, 677 A.2d 861 (Pa. Cmwlth. 1996).

7. Lyft is likely to succeed on the merits because, respectfully, the Commission's determination that Lyft's trip data is not a trade secret implicated two of these factors: it included a clear error of law and findings of fact not supported by substantial competent evidence.

8. First, the Commission committed an error of law in determining that Lyft's trip data was not a trade secret without applying the relevant test for trade secrets.

9. Pennsylvania follows the definition of "trade secret" set forth in comment (b) to section 757 of the *Restatement (2d) of Torts*, which reads: "A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *Id.* at 585.

10. In evaluating whether given information qualifies as a "trade secret," the following factors are considered: "1) the extent to which the information is known outside of his business; 2) the extent to which it is known by employees and others involved in his business; 3) the extent of measures taken by him to guard the secrecy of the information; 4) the value of the information to him and to his competitors; 5) the amount of effort or money expended by him in

developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.* “The crucial indicia for determining whether certain information constitutes a trade secret are ‘substantial secrecy and competitive value to the owner.’” *Id.* (citation omitted).

11. The Commission decided that Lyft’s trip data was not a trade secret without analyzing these factors. Rather, its October 23, 2014 ruling turned on the (mistaken) belief that the trip data at issue was not specific to any particular market, which it took as proof that Lyft’s trip data is not a trade secret. October 23 Order, p. 17. This was factually erroneous—Lyft’s trip data is specific to the particular market of Pittsburgh.

12. In any case, without specifying how this (mistaken) belief was relevant to Pennsylvania’s trade secret analysis, the Commission treated it as dispositive to the analysis. It then considered only two of the six trade secret factors, and did not disagree that Lyft’s trip data is not known outside of its business, or that it could not be independently developed by an outside entity. October 23 Order, p. 18. It simply repeated its erroneous conclusion that Lyft’s trip data was merely “aggregate” and therefore not a trade secret. *Id.*

13. Had the Commission conducted a full analysis under the relevant factors, Lyft’s trip data should have qualified as a trade secret.

14. First, Lyft’s trip data is (for now) known by no one outside of Lyft. *See* Declaration of Joseph Okpaku (Nov. 14, 2014) (attached as Exhibit A).

15. Second, it is disclosed on a strict need-to-know basis within Lyft. *Id.*

16. Third, Lyft takes the greatest measures to guard its trip data. *Id.*

17. Fourth, Lyft’s trip data is highly valuable to Lyft and Lyft’s competitors. *Id.* In short, the nascent TNC market is fiercely competitive, and Lyft’s competitors would use Lyft’s

trip data to determine whether and how to compete with Lyft in a given market (in this case, Pittsburgh). *Id.* The best evidence for this is the zeal with which Lyft's competitors have resisted providing the information to this Commission and its Bureau of Investigation and Enforcement, even at the cost of sanctions. *See, e.g.,* Interim Order Granting In Part BIE's Second Motion for Sanctions, Docket No. C-2014-2422723.

18. Fifth, it would be difficult to isolate the funds Lyft has devoted to developing the ability to collect trip data, because Lyft has developed that ability as part of the Lyft Platform, which is the critical technological achievement behind Lyft's success. *Id.*

19. And sixth, only by theft could Lyft's trip data fall into outside hands. *Id.*

20. The Commission's ruling is therefore likely to be reversed.

21. Second, the Commission's finding that Lyft's trip data was not specific to a particular market was not supported by substantial evidence. Rather, it seems to have been the product of a factual oversight. Absent this clear error and in light of substantial available evidence, Lyft's trip data should have qualified for protection.

22. The Commission's October 23, 2014 ruling appears to have rested on a belief that publication of Lyft's trip data would not publicly disclose information on Lyft's volume of business "in a particular market."

23. For instance, the Commission wrote:

[W]e are not persuaded that the data requested, and submitted, should be protected as proprietary pursuant to our standards set forth in 52 Pa. Code §5.365. As noted, the data requested is aggregate data involving trip numbers. It does not involve "the number of rides in a particular market or the concentration of pick-ups and drop-offs in specific segments of that market."

October 23 Order, p. 17; *see also id.* (“Similarly, Lyft’s allegation that ‘once a competitor knows the volume of Applicant’s business in a particular market, they can use that data to reassess their resource deployment in that area,’ is not persuasive. The data does not involve sales patterns, as Lyft suggests, but rather involves total numbers of trips provided in the entire service territory.”).

24. This was again incorrect. The release of Lyft’s trip data *would* publicly disclose the number of Lyft rides in a particular market: Allegheny County, Pennsylvania (i.e., Pittsburgh). The Commission actually said so explicitly one page later. October 23 Order, p. 18 (“[The data at issue] is simply a compilation of the number of trips Lyft provided *in Allegheny County* prior to Lyft being authorized by the Commission to operate.”) (emphasis added).

25. Beyond this apparent oversight, the Commission offered no support for its finding that Lyft’s trip data is not a trade secret. Its decision was therefore not supported by substantial evidence, and is likely to be reversed.

II. Lyft will suffer irreparable injury if its trip data is released.

26. Lyft’s trip data, like any trade secret, cannot be disclosed for even a second without irreparably harming Lyft. As the Pennsylvania Supreme Court has noted, “There is no effective means of reviewing after a final judgment an order requiring the production of putatively protected material.” *Crum*, 907 A.2d at 584 (quoting *Ben v. Schwartz*, 729 A.2d 547, 551–552 (1999)). In other words, “once disclosed,” the toothpaste is out of the tube, and “the confidentiality of potentially privileged information is irreparably lost.” *Id.* (citation omitted).

27. Thus, if the Commission releases the trip data, Lyft’s appeal will be undermined, no matter how meritorious its claims may be. As courts of this Commonwealth have noted, “Article V, Section 9 of the Pennsylvania Constitution guarantees the right to appeal from agency adjudications and ‘was intended to grant access to courts for the review of agency

adjudications.”” *Mercury Trucking, Inc. v. Pa. P.U.C.*, 55 A.3d 1056, 1074 (2013). Without a stay, Lyft’s right of access will be imperiled.

III. Other interested parties and the public will not be harmed by a stay.

28. The third and fourth requirements for a stay—that other interested parties will not be substantially harmed and that the public interest will not be adversely affected—are satisfied here. A stay would maintain the status quo by preserving Lyft’s trip data as confidential while Lyft pursues its appeal. Importantly, this data has been protected under seal since September 3, 2014, and there is no immediate public or private need for its release before Lyft can avail itself of process.

CONCLUSION

For the reasons set forth above, a stay is appropriate in this case. Lyft therefore respectfully requests that this Commission grant its stay or supersedeas request and stay the disclosure of Lyft's trip data pending Lyft's appeal.

Respectfully submitted:



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Dated: May 22, 2015

EXHIBIT “A”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT

Complainant,

v.

LYFT, INC.

Respondent.

Docket No. C-2014-2422713

**VERIFIED STATEMENT IN SUPPORT OF PETITION
FOR PROTECTIVE ORDER AND STAY OF DISCOVERY**

I, Joseph Okpaku, declare as follows:

1. I am the Director of Public Policy for Lyft, Inc. (“Lyft” or the “Company”). The following statement is based on my personal knowledge and is correct to the best of my knowledge.

Introduction

2. I understand that Lyft has been ordered to produce to the Bureau of Investigation and Enforcement (“I&E”) two sets of information.

3. First, Lyft must identify the number of transactions and/or rides provided to persons between points within the Commonwealth of Pennsylvania via connections made with drivers through Lyft’s website on the Internet, Lyft’s mobile application or Lyft’s digital software during certain periods. I will refer to this information as “raw trip data.”

4. Second, Lyft must identify and produce any and all invoices, receipts, e-mails, records and documents that Lyft sent to individuals in relation to rides they received between points within the Commonwealth of Pennsylvania via connections made with drivers through

Lyft's website on the Internet, Lyft's mobile application or Lyft's digital software during certain periods. I will refer to this information as "customer contact data," and will refer to both raw trip data and customer contact data as the "Requested Information."

5. Lyft began operating in Allegheny County, Pennsylvania in February 2014, which in effect means that Lyft began operating in Pittsburgh in February 2014. The Lyft app has never been used outside of Allegheny County. The Requested Information thus concerns specific data for a specific mid-sized city during a specific period of time, i.e., the initial roll out of the Lyft app. I am submitting this statement to explain why the Requested Information is highly confidential to Lyft.

The TNC Model

6. To best describe why the trip data is highly confidential, I must first discuss the emerging Transportation Network Company ("TNC") industry.

7. The TNC model, which helps drivers connect to passengers, is a new concept. Although informal ride sharing, through the use of bulletin boards and websites like Craigslist, has existed for years, there has never before been a mobile service that enables drivers and passengers to be matched instantly. This model represents a stark change from the more familiar call-and-demand service that taxicabs provide. But change does not happen overnight. TNCs are in a constant effort to educate the public on the benefits of their service and on how they operate. Further, unlike cab companies, which are located in nearly every city and town in the United States, TNCs are present in a very small fraction of cities and their existence is known by an even smaller fraction of people in those cities. TNCs fiercely compete for their business.

8. In terms of gaining market share, it is well-known that individuals are more likely to stay with what they know first. As a result, TNCs, including Lyft, place great importance on

their initial roll out in a city. Those first few months are key to assessing the success of their marketing efforts and of the service itself, which then informs future roll outs.

9. The decision to enter a market is not a minor one. Lyft is not Starbucks; it does not have the resources to saturate multiple markets at one time. Lyft carefully selects each market in which it offers its service and creates a detailed plan for how it intends to succeed in that market.

10. Most TNCs initially began operating in major cities, such as Chicago and Los Angeles, for obvious reasons—the greater the population, the greater the number of potential drivers and passengers. Although the size of those cities did not prevent stiff competition among TNCs, their size left more room for multiple TNCs to operate. In mid-sized cities like Pittsburgh, however, which have a fraction of major cities' population and population density, the lower number of potential drivers and passengers means that it may not be possible to support multiple TNCs, placing particular emphasis on being the first established TNC in the market. That is exactly the scene that is playing out across the country right now, including in Pennsylvania. TNCs are battling each other to claim significant market share in “uncontacted” mid-sized cities.

11. One result of that competition is that TNCs are constantly assessing their distribution of limited resources. If a TNC senses that it may be at risk of losing or failing to capture market share in a mid-sized city, then it may decide to increase its efforts to improve its market share or it may conclude that its resources would be better used elsewhere.

12. It is important to note that, while every city is different, many cities share important similarities. TNCs, just like countless other businesses, use information gained in one city to help inform their business decisions in other, similar cities.

The Requested Information is Highly Confidential

13. Lyft is not alone among TNCs in seeking to protect its raw trip data. In a noteworthy event last year, Uber's trip data, along with other data, was leaked to the media. *See* TechCrunch, *Leaked Uber Numbers, Which We've Confirmed, Point to Over \$1B Gross, \$213M Revenue* (Dec. 4, 2013) (attached as Exhibit 1). According to that article, Uber's CEO took aggressive action to prevent the information from being published.

14. The main reason that Lyft goes to such great lengths to protect its raw trip data is because of the significant value it has to Lyft and to Lyft's competitors. The information is valuable on both a micro- and macro- level.

15. On a micro-level, the raw trip data for the roll out in a given city, especially a mid-sized city, is valuable because it tells Lyft's competitors how Lyft is doing in that city, how successful Lyft's marketing efforts have been (and whether they should be replicated), and how (and where) its resources can be better allocated to compete with Lyft. Thus, while the fact that Lyft operates in Pittsburgh is public, the extent of Lyft's success in mid-sized cities like Pittsburgh—where TNCs' competition is currently fiercest—is kept decidedly non-public. If Lyft's competitors were to gain insight into the success of Lyft's service in a new, mid-sized city, I have no doubt that the information would be used to place Lyft at a competitive disadvantage, not just in that city, but in other cities around the country. As discussed above, Lyft's competitors, among other things, could use the Requested Information to reallocate their own resources and also to target drivers and passengers using the Lyft app.

16. Customer contact data involves an even greater degree of confidentiality because it involves disclosing specific information such as departure and arrival points. If competitors of Lyft were able to discern the specific travel patterns of drivers and passengers who use the Lyft app, they could easily use that information to gain a competitive advantage—for example, a

competitor could seek to flood a certain area at a certain time in an attempt to undercut Lyft's success in that area. Lyft also has reason to believe that other TNC employees have in the past used fake rides to harm users of the Lyft app. Greater insight into the location of the users of the Lyft app would allow such attacks to be that much more successful.

17. On a macro-level, Uber and Lyft are new companies using a revolutionary technology. For that reason, pundits have questioned the long term viability of the industry along with potential revenue and profit. There is widespread curiosity among the media, tech analysts, and others for insight into the success (or lack thereof) of TNCs. *See* TechCrunch, Hey Uber, Lyft Is Growing Faster Than You (Dec. 18, 2013) (attached as Exhibit 2). But, as is the case with many new industries and companies, a snapshot of a moment of time is unlikely to paint an accurate picture of the company's past successes or future prospects. That fact does not, however, prevent the media and analysts from speculating wildly as to the significance of that snapshot. And, unfortunately, for drivers, passengers, investors, and competitors, perception is often more important than reality. If Lyft is forced to disclose one small piece of its overall puzzle, it could lead to unfounded speculation as to Lyft's overall success, harming Lyft's interests. It could also assist analysts and Lyft's competitors in gaining insight into highly confidential financial information through their potential ability to extrapolate activity in Pittsburgh to other cities and the country as a whole.

18. Absent forced disclosure, it would be highly difficult, if not impossible, for a third-party to independently determine raw trip data and customer contact data in Pittsburgh.

Unilateral Disclosure Would Be Especially Harmful to Lyft

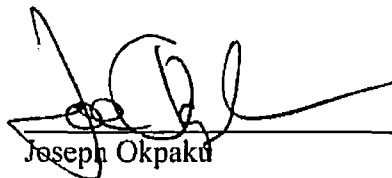
19. While disclosure of the Requested Information would itself harm Lyft, disclosure would be even more damaging if Lyft's competitors were not required to disclose at the same time. I can envision a scenario where one of Lyft's competitors would attempt to use Lyft's

disclosure as a way to build up its own brand. For example, a rival TNC could attempt to recruit drivers who currently use the Lyft app by asserting that it has connected more drivers and passengers than Lyft in Pittsburgh, and therefore, drivers should use it because it dominates the market. As it stands, Lyft would have no ability to rebut such claims because it would not have its competitors' trip data or customer contact data. A rival TNC could also attempt to dissuade drivers and passengers from using Lyft based on Lyft's disclosure of the data, arguing that it reflects a lack of concern for customer privacy. Although such an allegation would not be true, Lyft would still be harmed by simply having to rebut it, especially when the TNC would not be susceptible to the same claim because it would not have provided any trip data.

20. Lyft would also be harmed by unilateral disclosure because it would have no ability to assess its performance in Pittsburgh against a rival TNC's performance. Whatever differences there may be, rival TNCs will be given a head start in analyzing and responding to the Requested Information. Regardless of whether Lyft obtains the same data at some point in the future, it may not matter because the damage will have already been done in the interim.

I hereby verify that the statements made in this Verification are true and correct to the best of my knowledge and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

November 14, 2014


Joseph Okpaku