

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF PENNSYLVANIA**

*En Banc* Hearing Regarding )  
Transportation Industry Issues )  
\_\_\_\_\_ )

Docket No. M-2014-2431451

**TESTIMONY OF THE TAXICAB, LIMOUSINE & PARATRANSIT ASSOCIATION**

**Introduction**

Established in 1917, the TLPA<sup>1</sup> is a non-profit, national trade association of and for the private passenger transportation industry. We represent the owners and managers of taxicab, limousine, sedan, airport shuttle, paratransit, and non-emergency medical fleets. Our 1,100 member companies operate more than 100,000 passenger vehicles around the globe; transporting well over 2 million passengers each day — more than 900 million passengers annually.

The taxicab, limousine, and paratransit industry is an essential part of public transportation that is vital to this country’s commerce and mobility, to the relief of traffic congestion, and to improving the environment. The private taxicab, limousine, and paratransit industry in the United States transports 2 billion passengers annually, compared with the 10 billion passengers transported by public transit; provides half of all the specialized paratransit services furnished to persons with disabilities; serves as a feeder service to major transit stations and airports; and provides about half of its service to the transportation of disadvantaged people, such as the elderly, who are either not able to drive or do not have a car.

The TLPA’s mission is to provide our membership with a network of programs, services and support that will enhance their ability to effectively and profitably serve local public transportation needs. We are the leading information, education, and legislative resource in the passenger transportation industry and serve our members by representing common legislative

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<sup>1</sup> More information on the TLPA is available at <http://www.tlpa.org/index.cfm>.

interests; protecting and expanding industry rights and opportunities; collecting, interpreting, and disseminating industry information; providing forums for professional development and education; and advancing the image of the industry before the media and general public.

The TLPA believes that unlicensed, and therefore illegal operations of so-called “transportation network companies” (or “TNCs”) such as Lyft and Uber threaten to disenfranchise the entire for-hire vehicle industry, pose a very real danger to public safety, and despite the self-serving claims of these companies, will greatly infringe upon the public’s secure, equal and reliable access to transportation services. The TLPA submits this testimony in an effort to 1) inform the Pennsylvania Public Utilities Commission (the “Commission”) of the general operations of Lyft and Uber which are not significantly different than that of other taxicab and limousine operators and 2) to urge the Commission to enforce its current transportation regulations requiring that Lyft, Uber and any other common carrier obtain a Certificate of Public Convenience to operate for-hire services in the state, and to adhere to state safety and consumer protection regulations regarding service. While these transportation network companies may be utilizing relatively new technology (70% of TLPA member taxi fleets recently reported they employ app technology), the services they provide are the same as all other for-hire vehicle operations. As such, there is no basis for transportation network companies to be treated differently from other taxicab and limousine businesses and the promulgation of new rules in this regard is unnecessary.

## **Discussion**

### **A. The Commission’s Authority**

The State General Assembly has conferred upon the Commission the responsibility for regulating taxicab and limousine service in all parts of Pennsylvania, outside the City of

Philadelphia. As you are aware, the Commission issues Certificates of Public Convenience authorizing intrastate taxicab and limousine service for compensation. An application must be filed and a certificate must be issued before service may be provided.

Taxicabs and limousines are two distinguishable classes of for-hire service. Limousine carriers offer their customers luxury vehicles.<sup>2</sup> Arrangements are made by advance reservation and the passenger has exclusive use of the vehicle. Alternatively, taxicabs provide call or demand service, which allows passengers to hire the vehicle and its drivers either electronically (by telephone call, text, web order, app, etc.) or at a taxi stand, or by hail on the street. Further, ridesharing, or rather, a “ridesharing arrangement”, is defined in Pennsylvania Statutes Title 55, Navigation Chapter 17F, section 695.1, as the transportation of not more than 15 passengers where the transportation is “incidental” to the driver’s purpose.<sup>3</sup> The driver also cannot be engaged in the “*business* of transportation”, which is undefined in the law.<sup>4</sup> If a program qualifies as a “ridesharing arrangement,” the program is not subject to the following: (1) public utilities restrictions; (2) special insurance requirements for motor carriers; (3) laws imposing a greater standard of care on motor carriers than on other vehicles; or (4) laws imposing special equipment requirements and special accident reporting requirements.<sup>5</sup>

#### **B. Uber and Lyft are Common Carriers**

Companies like Lyft and Uber disingenuously attempt to skirt the Commission’s jurisdiction by proffering that they are mere “connectors” of transportation services and thus, their service offerings are “experimental” and a matter of first impression. The reality is that

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<sup>2</sup> See 52 Pa. Code §29.13.

<sup>3</sup> 55 P.S. § 695.1

<sup>4</sup> *Id.*

<sup>5</sup> 55 P.S. § 695.2

Lyft and Uber are like any other common carrier<sup>6</sup> that is regulated by the Commission. They are providing the same services of any other passenger carrier—they dispatch cars for pre-arranged/on-demand pick-ups; set rates; and create and provide equipment, including GPS fare meters, in order to charge and collect fares. Since their technology services allow for passengers to request an on-demand trip or a prearranged trip, these transportation companies are enjoying the economic benefits of taxicab and limousine service, all the while flouting the state regulations.

Uber and Lyft are transportation companies, period. Yet they want regulators to believe they don't have to play by the same rules as other taxicabs and limousines. Every time these companies arrange a ride through their smartphone applications (“apps”), they are breaking the law. The Commission must enforce its regulations and stop these illegal businesses.

### **C. Safety**

In very simple terms, allowing companies like Lyft and Uber to operate without any oversight or regulation is not only untenable, it is reckless. These providers initiate and manage transportation services for hundreds of individuals each day and use numerous drivers and vehicles to provide transportation services. However, they not only claim to incur no obligation or responsibility for ensuring that these drivers and vehicles meet established safety mandates, they seek indemnification from passengers for any liability arising from the unlicensed transportation services provided:

THE COMPANY DOES NOT PROVIDE TRANSPORTATION SERVICES,  
AND THE COMPANY IS NOT A TRANSPORTATION CARRIER....

**THE QUALITY OF THE TRANSPORTATION SERVICES SCHEDULED  
THROUGH THE USE OF THE SERVICE OR APPLICATION IS ENTIRELY THE  
RESPONSIBILITY OF THE THIRD PARTY PROVIDER WHO ULTIMATELY  
PROVIDES SUCH TRANSPORTATION SERVICES TO YOU. YOU UNDERSTAND,**

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<sup>6</sup> A common carrier by motor vehicle, as defined in 66 Pa.C.S. §102 (relating to definitions), transporting passengers. 52 Pa. Code §29.1.

**THEREFORE, THAT BY USING THE APPLICATION AND THE SERVICE, YOU MAY BE EXPOSED TO TRANSPORTATION THAT IS POTENTIALLY DANGEROUS, OFFENSIVE, HARMFUL TO MINORS, UNSAFE OR OTHERWISE OBJECTIONABLE, AND THAT YOU USE THE APPLICATION AND THE SERVICE AT YOUR OWN RISK.<sup>7</sup>**

Indeed, the purported commitments to safety asserted by Lyft and Uber are merely illusory so long as they are permitted to operate without oversight and accountability to the safety requirements imposed on all other common carriers. Without accountability, there is no standard or enforcement by which Uber or Lyft would be subject to independent driver background checks and vehicle inspections. To ensure the safety of passengers, each common carrier vehicle must pass a safety inspection, and each operator seeking a license is subject to a criminal background check. Uber and Lyft should not be allowed to skirt these requirements.

Allowing Uber, Lyft, or any other unlicensed transportation company to provide transportation to the public without oversight or regulation is astonishingly reckless. When someone is hurt from transportation arranged by one of these unregulated, transportation companies, it will be because the Commission completely abandoned its responsibilities to enforce regulations that require, amongst other things, that evidence of insurance be maintained with the Commission to meet the state's minimum requirements for common carriers; that a tariff containing a carrier's rates for service within Pennsylvania be filed; and that all carriers register their vehicles with the Pennsylvania Department of Transportation for commercial plates.

#### **D. Surge Pricing**

With respect to rates of service, it is commonly known that Uber engages in "surge pricing" in which Uber will dramatically increase the price of a trip when demand for a trip is high. Thus, in high-demand situations like New Year's Eve, after a large concert lets out, or

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<sup>7</sup> See Uber USA Terms & Conditions available at <https://www.uber.com/legal/usa/terms>

when a natural disaster occurs which makes for-hire vehicles hard to obtain, Uber claims that its higher prices facilitate more rides. Uber’s CEO Travis Kalanick has defended this action saying, “We are not setting the price. The market is setting the price...We have algorithms to determine what the market is.”<sup>8</sup>

The consumers who fuel the market however, have consistently been in an uproar regarding surge pricing. In New York, after Hurricane Sandy, Uber implemented surge pricing, taking advantage of New Yorkers in their time of need. Similarly in the wake of a snowstorm in New York City less than three (3) months after Sandy, Uber yet again engaged in surge pricing.<sup>9</sup> At one point during the snowstorm, Uber was asking for as much as \$35 per mile, making overall fares almost eight (8) times the average.

In response to this, the New York State Attorney General (“AG”) began investigating Uber for violating the state’s laws regarding price gouging. As a result of that probe, Uber entered into agreement with the AG to put a cap on prices during “abnormal disruptions of the market,” meaning natural disasters and emergencies, however surge pricing may still occur in other “high-demand” situations. This unregulated surge pricing harms not only consumers but also the industry. When one company is allowed to not file their rates, and to charge whatever fare they want based on favorable market conditions, while other common carriers are required to file tariffs, the law-abiding common carriers are put at a disadvantage. Further, the consumers who cannot afford the surged prices are left with fewer transportation options.

#### **E. Insurance**

The Commission’s current regulations set minimum insurance coverage requirements upon common carriers to ensure that suitable coverage is maintained to protect the driver and the

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<sup>8</sup> <http://www.wired.com/2013/12/uber-surge-pricing/>

<sup>9</sup> <http://brainsandeggs.blogspot.com/2013/12/uber-gouges-customers-in-bad-weather.html?spref=fb&m=1>

public. However, since transportation companies like Lyft and Uber are unlicensed, the Commission has no mechanism to verify the self-serving representations made by these companies. At this time, at least twenty states and the District of Columbia (California; Connecticut; the District of Columbia; Idaho; Iowa; Kansas; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Nebraska; Nevada; New Jersey; New Mexico; Ohio; Pennsylvania; Rhode Island; South Carolina; Tennessee; and Utah) have issued alerts, warning consumers of insurance gaps presented by purported “ridesharing” services like UberX and Lyft. The concern arises when a non-commercially licensed driver uses a non-commercially licensed vehicle to provide commercial for-hire transportation services.

The Personal Insurance Federation of CA (“PIFC”) was the first insurance trade association to make a public statement addressing the issue of coverage when it comes to rideshare app companies and the transportation services they offer. The PIFC, which represents six (6) of the largest insurance companies in the U.S.,<sup>10</sup> and which collectively, insure the majority of personal automobiles in California, submitted comments in the California Public Utilities Commission (“CPUC”) rulemaking proceeding, which explained the position of its members on the subject:

It appears that the industry standard for personal auto insurance ... is to exempt from insurance coverage claims involving vehicles used for transporting passengers for a charge. Thus, in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist . . . . The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.<sup>11</sup>

Moreover, recently the California Department of Insurance (“CDI”) conducted an

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<sup>10</sup> The members of PIFC include State Farm, Farmer’s, Progressive, All State, Liberty Mutual and Mercury Insurance Group. <http://www.pifc.org/>

<sup>11</sup> See PIFC’s Comments filed on January 28, 2013 in Docket # 1212011, Available at <http://delaps1.epuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0>

investigative hearing on rideshare companies which resulted in the California Insurance Commissioner writing a letter, dated April 7, 2014, to the CPUC offering recommendations for more stringent insurance requirements.<sup>12</sup> In the letter, the Insurance Commissioner notes that the CDI finds that personal automobile insurers never planned or intended to underwrite for the risks presented by individuals driving their personal vehicles for commercial purposes, which did not exist, when the current policies were written. As such, insurers did not incorporate for-hire use when developing their rates and the risk exposure to the personal automobile insurance “pool” that is presented by ridesharing app services may increase personal automobile insurance rates. The Insurance Commissioner also stated, “The fact that some exclusions in personal automobile insurance policies may not be clear on this point should not be misinterpreted as an agreement to cover this new TNC risk.”

Indeed, since auto liability insurance is the single largest expense in many of our members’ entire cost structure, the Commission should have no expectation that the insurance coverage of unlicensed operators such as Lyft and Uber, comports with the regulatory minimum for licensed common carriers since Lyft and Uber take the position that their transportation services are beyond the Commission’s regulatory authority. Regulated companies must carry a minimum amount of primary commercial auto liability insurance. It will only be a matter of time before the veil is lifted regarding the actual coverage carried by such companies as tragic circumstances involving TNCs and passenger/bystander injuries, are currently being litigated in wrongful death and personal injury lawsuits throughout the country.<sup>13</sup>

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<sup>12</sup> <http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf>

<sup>13</sup> See *Ryan Lawrence v. Uber Technologies, Inc.*, Case No. CGC-13-535949 (California 2013); *Jiang Liu, et al. v. Uber Technologies, Inc.*, Case No. CGC-14-536979 (California 2014). *Herrera, et al. v. Uber Technologies, Inc., et al.*, Case No. CGC-13-536211(California 2013); *Fahrbach v. Uber Technologies, Inc.*, Case No. CGC-13-533103 (California 2013).



## **F. Around the Country**

Lyft, Uber and other “TNCs” like to inflate the degree of support regulators have shown to amend or even disregard their regulations in order to allow them to operate. Please do not be fooled. Only two states (CA and CO) and fewer than ten cities (Baton Rouge, DC, Houston, Milwaukee, Minneapolis, Oklahoma City and Seattle) have created a new regulatory category for TNCs. Although TNCs have been around for nearly six (6) years, they operate in fewer than 100 US cities [collectively]. Given that there are about 2,000 communities with taxi service, Uber and Lyft are not very prevalent. In most cities, Uber and Lyft have not been granted authority to operate and are being challenged by the city leaders for operating without a permit and without meeting the full public safety requirements. For example, a temporary restraining order (“TRO”) was issued against Lyft by a St. Louis judge upon the request of the City’s Metropolitan Taxicab Commission (“MTC”).<sup>14</sup> The MTC is arguing that it has jurisdiction over Lyft, while Lyft contends that it isn't a taxicab service. On July 15, the Court extended the TRO through August 25, 2014, the date of hearing on the Commission’s application for permanent injunction.<sup>15</sup>

Indeed, when pressure has been applied by local regulators to enforce existing for-hire transportation regulations, Uber and Lyft have complied. In New York City, Uber and Lyft have chosen to fully abide by the regulations of the City’s Taxi & Limousine Commission - regulations which are more voluminous than anywhere else in the U.S.

## **Conclusion**

While the services provided by Uber and Lyft are not new, the issues presented regarding adequacy of existing regulations pose questions regarding whether all common carriers, and the regulations pertaining to them, should be updated to increase consumer satisfaction while

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<sup>14</sup> [http://www.stltoday.com/news/local/govt-and-politics/nick-pistor/st-louis-judge-orders-lyft-app-to-be-disabled-in/article\\_39b51215-7f75-545f-b763-f2b61a142cb8.html](http://www.stltoday.com/news/local/govt-and-politics/nick-pistor/st-louis-judge-orders-lyft-app-to-be-disabled-in/article_39b51215-7f75-545f-b763-f2b61a142cb8.html)

<sup>15</sup> <http://www.bizjournals.com/stlouis/blog/biznext/2014/07/judge-keeps-in-place-restraining-order-against.html>

maintaining public safety. As these issues are being addressed by the Commission, it must not act too quickly to adopt new rules to follow the small number of jurisdictions that have compromised their regulatory structure for the sake of appearing “innovative.” Indeed, failure to consider incumbent taxicab and limousine companies would very likely result in creating an uneven playing field between competitors that are all providing the same commercial transportation services, which could result in a significant decline in service quality.

Make no mistake - Uber and Lyft are common carriers. Although they utilize relatively new technology, the nature of their services is the same as licensed taxicabs and limousines. To allow these companies to continue operating without Commission oversight and regulation threatens the safety of the public, and negatively impacts the public interest in areas of consumer protection, and the quality and availability of passenger transportation services in Pennsylvania. Moreover, Lyft and Uber should not be allowed to profit from their illegal operations.

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