Lyft, Inc.'s Implementation Plan

in response to

The Pennsylvania Public Utilities Commission's Background Check Review

D-2019-3012209

Submitted September 11, 2020

Introduction

Pursuant to 66 Pa. C.S. § 501(b), the Pennsylvania Public Utility Commission (the "PUC"), has the authority to regulate transportation network companies ("TNCs") in the Commonwealth of Pennsylvania. That authority includes the right to audit and assess the management of any public utility under the PUC's jurisdiction. *See* 66 Pa. C.S. § 331(a). This law applies to all TNC operations within Pennsylvania, except for cities of the first class (i.e., Philadelphia) where, pursuant to 66 Pa.C.S. § 2603(a), the City of Philadelphia regulates TNCs.

On August 15, 2019, the PUC's Bureau of Audits (the "Bureau") initiated discussions with Lyft, Inc. ("Lyft" or the "Company") to start a performance review of the Company's background check process in Pennsylvania (excluding Philadelphia) (the "Audit").

The Bureau's objectives were as follows:

- To determine Lyft's compliance with all applicable provisions within Chapter 26 of 66 Pa C.S. and Chapter 29 of 52 Pa Code pertaining to the Company's driver requirements and background check processes;
- To identify opportunities for process improvements and develop recommendations to address those opportunities; and
- To provide the Commission, Lyft, and the public with an assessment of the Company's background check process for drivers on Lyft's platform.

The Bureau's Audit was limited to these parameters, and further refined to include a review of Lyft's driver onboarding process and driver quality assurance programs.

Lyft has worked with the Bureau on this Audit since August 2019, and provided information about the Company and its internal practices, while also facilitating interviews with multiple subject matter experts at the Company about Lyft's general operations, background check process, driver onboarding, and Safety team. The Bureau completed the Audit on August 27, 2020, when it issued its Report with the Audit's findings and recommendations. As noted in the Report, the COVID-19 pandemic developed during the Bureau's fieldwork, which affected the timeline for the Bureau's follow-up interviews and information requests. However, the Bureau was still able to complete all of its interviews with the Company's relevant subject matter experts and received responses to requested information. Consequently, the pandemic's effect on the Audit was limited to a delay in completion of the Report, and did not otherwise affect the Bureau's process.

Following publication of the Report, the Bureau requested that Lyft respond with an Implementation Plan that addressed each of the Bureau's recommendations. Lyft submits this Implementation Plan pursuant to the Bureau's request.

The Company is grateful to the Bureau for the partnership shown during this Audit. The Audit was conducted by John Clista, Porus Irani, Barry Keener, Kelly Monaghan, Nathan Paul, and Michael Savage.

RECOMMENDATION 1   Document detailed operating policies and procedures.

LYFT RESPONSE   Company partially accepts the recommendation.

Lyft partially accepts the Report's recommendation that it develop documented operating policies and procedures governing its background check and onboarding practices. However, Lyft respectfully disagrees with the Report's characterization of how the Company currently documents its background check and onboarding processes.

In addition to the narrative descriptions of Lyft's background check and onboarding practices, Lyft provided the Bureau with copies of each of its contracts with the Company's background check vendors. Each of those contracts provide specific details about the different component steps vendors use to conduct background checks for Lyft, including but not limited to, the type of searches conducted, and the registries and databases searched. Lyft's Background Check team uses the standards outlined in these contracts to monitor how vendors complete background checks. Additionally, Lyft's Background Check team regularly meets with those vendors to ensure any inconsistencies in the process are addressed promptly.

The Report also states, "[p]rocedures should include detailed instructions to achieve uniformity in performance of its critical functions, such as onboarding and complaint handling." The Company would like to clarify that Lyft does indeed maintain, and provided to the Bureau, samples of its investigation workflows highlighting the detailed, step-by-step instructions employed when responding to and resolving user support requests.

Given the breadth of formal documentation already maintained by the Company, Lyft acknowledges the benefits of written policies and procedures. Accordingly, Lyft is currently developing internal written policies like those recommended by the Report. These policies will be broken down into discrete process documents representing different segments of the Company's onboarding and background check processes. The formalization of background policies and procedures is being led by Senior Counsel Allen Lohse, as well as members of the Compliance team. Lyft expects to complete these efforts by the end of the first half of 2021.

RECOMMENDATION 2   Enhance the background check process and the continuous criminal monitoring function.

LYFT RESPONSE   **Company partially accepts the recommendation.**

Lyft remains committed to ensuring the effectiveness of its background check process when screening drivers. Lyft conducts driving record checks and criminal background checks for all drivers in Pennsylvania before they are accepted to drive, and implemented additional biannual criminal background checks in April 2019. Indeed, at the end of 2019, to further strengthen the background check process, Lyft implemented continuous criminal and continuous driving record monitoring.

Lyft partially accepts the Report's recommendation that Lyft's continuous criminal monitoring function could be enhanced. For, as the Bureau noted, Pennsylvania state law currently prohibits the Company from making changes recommended by the Report. Lyft cannot fully leverage continuous monitoring in Pennsylvania because current state law prohibits Pennsylvania counties from feeding arrest data into continuous monitoring databases. As such, it is incumbent upon Pennsylvania's legislature to modify its state right-to-know law in order to allow counties to provide arrest records to facilitate continuous criminal monitoring in the state. Indeed, while Lyft enrolled all Pennsylvania drivers into continuous criminal monitoring through its vendor, First Advantage, Pennsylvania law prevents state courts from sharing non-conviction information for Pennsylvania residents with First Advantage. Lyft supports legislative changes that would allow Pennsylvania courts to report non-conviction information as this would improve the continuous criminal monitoring process. Lyft looks forward to collaborating with Pennsylvania lawmakers to advance this critical legislative change. The effort to affect this change will be pursued in conjunction with First Advantage, and led internally by the Company's Policy team, specifically Public Policy Manager Angela Bowie, as well as Senior Counsel Allen Lohse. Note that while the Company intends to continue pursuing the legislative change detailed above throughout the second half of 2020, the timing of the legislative process and ultimate decision-making authority is entirely outside of Lyft's control.

The Report also recommended that Lyft increase the frequency of checks against sex offender registry ("SOR") databases. The Company would clarify that more frequent checks against SORs would provide limited additional value due to the protracted timeframe in which an offender must register. Changing Pennsylvania law to allow for continuous criminal monitoring would be far more effective as this would ensure continuous screening for drivers arrested due to allegations of sexual offenses. As noted in the Report, driver-applicants are checked against state and federal SORs upon enrollment into continuous monitoring. The function of SORs is to provide a list of individuals who were convicted of crimes that required them to register as a sex

offender. An individual is not required to register with the SOR though until after a conviction. Indeed, individuals required to register with the SOR may delay registration or even fail to register. Under Pennsylvania state law, offenders are generally not required to register until their sentencing or release from incarceration. Importantly, because SOR monitoring does not rely on arrest data, the continuous monitoring Lyft could employ in this context, if allowed by Pennsylvania law, could actually provide more visibility into investigations related to alleged sexual offenses than that provided by state and federal SORs. Continuous monitoring would alert the Company to an arrest for a sexual offense, while checks against an SOR would not reveal that same offense until a registration occured post-conviction. Still, in the absence of a legislative change that would allow continuous criminal monitoring, the Company will implement more frequent checks against federal and state SORs. This change will be overseen by Senior Counsel Allen Lohse, who is responsible for overseeing the Company's background check practices.

Lyft does not accept the Report's recommendation as it pertains to fingerprinting and seeks to provide additional insight regarding the Report's statements about fingerprinting. Lyft does not use fingerprint-based checks for myriad reasons, among them (1) fingerprinting relies on a federal database that is unreliable and incomplete, and (2) fingerprinting has proved potentially discriminatory against minority communities. Instead, Lyft employs a multi-tiered criminal screening process facilitated by two of the top background check companies in the country. This process provides Lyft with comprehensive criminal history reports using personally identifiable information to search wide-ranging national and local sources.

Fingerprint-based background checks rely on the FBI's Criminal Justice Information System, a database of state and municipality-submitted arrest records. This database is often incomplete. States and counties have no mandate to update the database with final case outcomes, meaning the database often lacks up-to-date records and final court dispositions - whether someone was charged, convicted or acquitted. A 2015 Government Accountability Office report estimated that up to 50% of arrest records lack final dispositions. Instead of relying on a singular database and biometric features, Lyft's comprehensive background check process pulls from multiple criminal databases and inputs.

Lyft's independent, third-party background check companies are subject to the Fair Credit Reporting Act (FCRA),[1] which requires consumer reporting agencies to ensure their background check information is accurate, up-to-date and complete. FBI records are not subject to the same consumer protection laws, and so these records often lack personal identifying information because they are not subject to the same accuracy and completeness standards. Some records may not even be included in the database because of the poor quality of the fingerprints, and in

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[1]Under the FCRA, consumer reporting agencies can only report information that is complete, accurate and not obsolete. End users of reports (such as Lyft) are not permitted access to records that are not verified as such.

other instances, fingerprint documentation is lost when transferred between departments.

There are also significant equity concerns surrounding fingerprinting. Fingerprint-based background checks have shown to have a discriminatory impact on communities of color. In America nearly 50% of African American men and 44% of Latino men are arrested by the age of 23,[2] and 1/3 of felony arrests do not result in a conviction.[3] Basing background checks on incomplete arrest records with no final disposition is unfair and discriminatory to communities of color, who are more likely to come into contact with the police.

Lastly, the Company would like to address the Bureau's recommendation that Lyft's "enhanced identity verification" be implemented in a randomized manner as a deterrent to the fraudulent use of a driver's account. Enhanced identity verification does not function as background check, it does not provide any insight into a driver's criminal or driving history. Rather, enhanced identity verification ensures the person using an approved driver account is actually the approved driver. While this is an important safety feature, it is not accurate to analogize it to the processes employed as part of the Company's background check practices.

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[2] *See* Robert Brame, Shawn D. Bushway, Ray Paternoster, Michael G. Turner, *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23* (Crime & Delinquency, Vol 60, Iss. 3, 2014), https://journals.sagepub.com/doi/abs/10.1177/0011128713514801?journalCode=cadc.
[3] *See* Bur. of Justice Statistics, Dept. of Justice, Bull. NCJ 228944, Felony Defendants in Large Urban Counties, 2006 (Rev'd May 2010), https://bjs.gov/content/pub/pdf/fdluc06.pdf.

RECOMMENDATION 3   **Share information with those in the vehicle for-hire industry about users deactivated due to serious safety issues.**

LYFT RESPONSE   **Company partially accepts the recommendation.**

Lyft partially accepts the Report's recommendation about the utility of a shared database reflecting driver deactivations. Lyft is actively exploring the development of a mechanism that would allow Lyft to notify other ridesharing companies about drivers deactivated from Lyft's platform for certain safety reasons. This initiative is being led by various team members, including Allen Lohse and Jennifer Brandenburger, Director, Public Policy - Community Safety. Since establishing a database like that recommended by the Report requires collaboration with other rideshare companies, Lyft is unable to control the timeline for implementation and, as such, cannot commit to a completion date for this initiative. That said, Lyft is committed to exploring such a mechanism for sharing certain deactivation information and will continue pursuing this through the remainder of 2020 and beyond as necessary.

Lyft respectfully disagrees with and rejects the Report's recommendation that Lyft create a database reflecting rider deactivations. Importantly, such a recommendation does not appear to be within the scope of the Bureau's Audit. As stated in the Report, this Audit's scope is limited to the Company's compliance with Chapter 26 of Title 66 of the Laws of Pennsylvania. Pennsylvania's TNC law and regulations do not address or implicate in any way the suitability of riders for use of TNC services, background check screening of riders, or the disqualification of riders.

RECOMMENDATION 4   **Create and track performance metrics and establish goals for each.**

LYFT RESPONSE   **Company partially accepts the recommendation.**

Lyft partially accepts the Report's recommendation that it implement specific performance metrics and goals for its Pennsylvania operations. The Company respectfully disagrees, however, with the Report's characterization that it does not currently monitor the performance of its operations through various performance metrics.

During the Audit, the Company's subject matter experts described different metrics the Company tracks to assess its operations in Pennsylvania, including those related to onboarding, background check practices, and safety on the platform. However, the Report concluded that such data was not readily available and performance goals were not established. This is not accurate, and mischaracterizes information provided during interviews with the Company's subject matter experts about how the Company assesses performance.

With respect to background checks and onboarding, the Company relies on the service level agreements with its background check vendors to ensure the quality of those vendors' performance. Moreover, members of the Compliance team monitor relevant onboarding metrics, such as the speed of checks ordered, any errors or issues with reports, turnaround time, records provided, and the contents of those records. Utilizing these metrics, the Company routinely meets with its background check vendors to discuss the performance of background checks.

The Report finds that, "although Lyft provided PA statistics in certain categories such as percent of complaints classified as safety-related, the auditors were not provided any other goals or performance metrics despite multiple requests." As was previously noted, Lyft did in fact discuss a range of metrics concerning the Company's operations in Pennsylvania. Moreover, while the Report references these metrics in the context of measuring performance, these operational metrics are better understood as a means to identify or understand trends in Pennsylvania operations. As referenced in this Implementation Plan, and the Report itself, the Company monitors operational metrics such as active Pennsylvania drivers, various statistics about its background check practice, as well as data concerning safety incidents and deactivations on the platform. While the Report concludes, "that such information was not readily available, or Lyft was unwilling to provide such information in this setting," Lyft does in fact maintain and monitor such metrics, and relies upon them to understand the Company's performance and to inform decision-making as related to operations in Pennsylvania.

Accordingly, Lyft partially accepts the Bureau's recommendation that it track and set performance goals because the Company asserts that it already actively tracks and analyzes a host of operational metrics. The Company's Customer Cares and Trust & Safety team, led by Director Scott Raymond, among others, as well as its Background Check team, led by Senior Counsel Allen Lohse, will maintain the practices described above in order to actively monitor and assess the performance of the Company in Pennsylvania.

Finally, to the extent the Commission would consider requiring TNCs report certain metrics, the Company would note that this should include input from and discussion with TNCs to ensure that any required metrics are relevant and helpful, but will not be unduly burdensome for TNCs to report.

RECOMMENDATION 5 **Leverage technology to reduce the level of insufficient information in the complaint investigation process.**

LYFT RESPONSE **Company partially accepts recommendations**

Lyft partially accepts the Commission's recommendation that technology could be utilized to provide more certainty and improve the investigation of incidents. Lyft respectfully disagrees however with the Report's characterization that many of Lyft's investigations are incomplete or inconclusive.

Lyft respectfully disagrees with the Report's assessment that "Lyft is unable to reach a conclusion in many complaint investigations due to incomplete or insufficient information provided and/or acquired." This finding does not reflect the reality of investigating user complaints; the Company is not a court of law and does not adjudicate fault. Unless Lyft has received information from law enforcement, the Company is generally limited to the information provided by its users in response to an incident on the platform. As such, while Lyft makes every effort to gather relevant information, the Company may not always have access to all possible information. Still, the Trust & Safety team investigates reported incidents to identify violations of Lyft's Terms of Service and Community Guidelines, and makes determinations based on those investigations. Lyft also retains information about reported incidents, and can take appropriate action if the Company learns of similar problematic conduct by a user.

Lyft is considering how to utilize various technologies in a manner that would achieve the safety objectives recommended by the Report. These technological improvements will be further explored and considered by a range of internal stakeholders, including the Trust & Safety and Legal teams.

RECOMMENDATION 6   Implement, redesign, and /or improve safety related features of the mobile app.

LYFT RESPONSE   **The company partially accepts the recommendation**

Lyft partially accepts the recommendation that additional safety features may be implemented to further improve safety, but otherwise respectfully disagrees with the rest of the Report's recommendations.

First, Lyft does not support mandatory PIN verification systems, as the Company has determined that such systems do not increase rider safety. Regardless, there is already legislation pending at the federal level that would require rideshare companies to offer a ride verification feature, which could include PIN matching. Given this pending legislation, there is good cause to refrain from additional action in this space until there is clarity about the specifics of a potential federal mandate of verification systems.

While Lyft disagrees with the Report's recommendation that Lyft consider PIN verification systems, Lyft does agree that ride matching could be improved by other means, including requiring front license plates on all vehicles, which Pennsylvania does not currently require. Lyft strongly supports laws that require mandatory front and back license plates. Front license plates are important to assist riders in identifying the correct vehicle, as most riders approach their ride from the front of the vehicle. The Company believes license plate verification is the safest and most effective way to ensure correct driver and rider matching before a rider enters a vehicle. Lyft will advocate for legislative changes in Pennsylvania to require front license plates as this would help promote safety on TNC platforms.

Still, Lyft continues to provide various methods through which riders can ensure they are entering the correct vehicle of the driver with whom they were matched. Specifically, once a driver matches with a rider, the app populates with the driver's photograph and license plate number, as well as a picture of the driver's vehicle, license plate number, and information about the vehicle's make and model.

Lyft also respectfully notes that the Bureau's recommendation fails to take into account important safety features already established on the Lyft platform. In addition to confirming the correct ride by checking the driver and vehicle information shown in a rider's app, Lyft utilizes its "Amp" as another method of correctly matching rider and driver. The Amp is a lighting beacon that sits in the front windshield of a driver's vehicle. When paired with a driver's account, an Amp will display a specific color, which is then also indicated in the rider's app. By

ensuring a vehicle's Amp is displaying the same color indicated in their app, riders can further confirm they are entering the vehicle with which they were matched.

The Report also discussed the use of "enhanced identity verification" - i.e., a selfie-challenge - that requires a driver to submit a photograph in order to access the platform. This picture is then compared to photographs already uploaded by the driver. This process ensures that the person utilizing a driver's account is in fact the authorized driver. The Report recommends requiring the selfie-challenge on a randomized basis to act as a deterrent to the fraudulent use of the platform. Lyft rejects the Report's recommendation to utilize the selfie-challenge in this manner. The Company currently utilizes the selfie-challenge when a driver's use of their account or outreach from riders indicate potential fraud. While effective, enhanced identity verification does present equity concerns, particularly in how errors in the comparisons of photographs could have a potential discriminatory effect. As such, enhanced identity verification must be used judiciously. The Company's position is that its current use of enhanced identity verification when prompted by user outreach or observed driver behavior is a more effective and equitable practice than instituting randomized selfie-challenges.

Lastly, Lyft disagrees with the Report's recommendation that the Company begin requiring its riders to upload photographs. First, requiring rider photographs allows for potential discrimination against riders. An important benefit offered by the introduction of rideshare into the transportation marketplace was that app-based ride requests reduced the risk that drivers would discriminate against riders. Discrimination has been a historic problem in the for-hire vehicle industry, especially with taxis. Research suggests that Lyft has had a positive impact on solving this problem, and there are concerns about any mandates that would inhibit equitable access to transportation.[4] Importantly, Lyft allows its users to request rides for other people. Requiring rider photographs in this context would cause confusion in such instances.

Ultimately, notwithstanding Lyft's objections to pin verification systems and the suggestion of rider photographs, Lyft does partially accept the Report's recommendation that it could improve ride matching features in the mobile app. Specifically, Lyft will continue to advocate for a legislative change in Pennsylvania that would require front and back license plates for all vehicles. Matching license plate information shown in-app with the license plate displayed by the vehicle in question is the most effective way to identify the correct vehicle. The Company's Public Policy team, led in Pennsylvania by Public Policy Manager Angela Bowie, will push for these changes at the state level throughout the second half of 2020 and beyond.

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[4] Anne Elizabeth Brown, *Ridehail Revolution: Ridehail Travel and Equity in Los Angeles*, Inst. of Transp. Studies (Jun. 27, 2018),
https://www.its.ucla.edu/2018/06/27/ridehail-revolution-groundbreaking-its-dissertation-examines-discrimination-and-travel-patterns-for-lyft-uber-and-taxis/.

RECOMMENDATION 7 **Track the cause of all driver and rider deactivations and maintain a database of such deactivations.**

LYFT RESPONSE **The company partially accepts this recommendation**

Lyft partially accepts the Report's recommendation that Lyft track the cause of all driver and rider deactivations. Although the Company does not organize its user deactivation data in the manner suggested by the Report's, Lyft does maintain detailed records about each individual incident and support request, including records of all rider and driver deactivations.

The Report states that Lyft began categorizing rider and driver deactivations in June 2018. It is important to note that even prior to June 2018, the Company maintained detailed records about every deactivation on the platform, including the underlying reason for the deactivation, information obtained through any investigation, and communications with relevant parties. Since June 2018, Lyft has begun categorizing user deactivations, albeit in a manner different than what was requested or recommended by the Bureau. As discussed in subject matter expert interviews with the Bureau, the Company's experience in tracking deactivations - as well user outreach in general - has been driven by observations of user behavior. As such, the Company's practices for tracking user deactivations has changed over time. For example, the Company has implemented the National Sexual Violence Resource Center's taxonomy in order to better categorize certain types of offenses alleged to have occurred on the platform.

Lyft partially accepts the Report's recommendation that the Company actively track user deactivations, because that is the current process, and importantly, Lyft retains and reviews the information underlying those deactivations. The Company's Trust & Safety team has overseen the implementation of changes to how the Company tracks user deactivations over the past several years. Understanding and organizing data about user deactivations is an iterative process driven by observations of user behavior on the platform. As such, the Company's practices relating to the organization and how deactivations are monitored will continue to evolve throughout the course of 2020 and beyond.