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July 21, 2020

Commissioner Liane M. Randolph
Commissioner Clifford Rechtschaffen
Committee on Policy and Governance
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

ATTN: Deidre Cyprian (Deidre.Cyprian@cpuc.ca.gov)

Re: Lyft Comments on June 17, 2020 Draft Enforcement Policy

Dear Commissioners Randolph and Rechtschaffen and Ms. Cyprian:

On June 17, 2020, the Commission’s Committee on Policy and Governance (“Committee”) circulated a Draft Enforcement Policy (“Draft Policy”) to the service list for notice of amendments to the Commission’s Rules of Practice and Procedure. Lyft, Inc. (“Lyft”) hereby submits its preliminary comments on the Draft Policy for the Committee’s consideration. Lyft is pleased with the stated focus of the Draft Policy on “adoption and application of consistent enforcement practices” and ensuring that “regulated entities subject to an enforcement action receive due process (e.g. notice and an opportunity to be heard).”¹ Lyft offers comments below on three areas of concern for the Committee’s consideration. These comments are offered in the spirit of ensuring that any new regulations to implement the Draft Policy further the Committee’s identified goals.

First, the Draft Policy goes beyond policy pronouncements intended to promote consistent enforcement practices. Instead, the Draft Policy seems to read more like an implementation plan by providing a detailed roadmap of steps that Staff may take to enforce Commission rules and other legal requirements. In addition, the Draft Policy does not clearly delineate instances in which it simply documents existing enforcement tools, and instances in which it proposes the addition of new enforcement tools. For example, the Draft Policy outlines detailed requirements for certain existing enforcement tools, such as regarding the Notice of

¹ Draft Policy, p. 1.

Violation (“NOV”) process, including: (1) the information that Staff must include in an NOV; (2) how and when regulated entities must respond to an NOV; and (3) how Staff will evaluate the regulated entity’s response to determine whether to accept it, or recommend additional enforcement.² However, the Committee’s July 1, 2020 Presentation appears to suggest the addition of new enforcement tools, such as the Administrative Consent Order and the Administrative Enforcement Order. The Draft Policy does not clearly distinguish between existing and new mechanisms. Therefore, Lyft respectfully suggests that this type of detailed, prescriptive guidance, particularly for proposed new requirements, be excised from the Draft Policy. Instead, any new enforcement mechanisms that the Commission considers for adoption should be circulated in proposed regulations subject to public review and comment.

Second, the Draft Policy delegates broad authority and discretion to Staff³ that appear to exceed what the law allows. For example, the Draft Policy empowers Staff to do the following: (1) pursue enforcement actions; (2) orally inform regulated entities of issues that do not rise to the level of violations, but that should be corrected; (3) send warning letters; (4) issue stop work orders; (5) determine that a violation has occurred; (6) establish penalty amounts for a violation; (7) negotiate an Administrative Consent Order; (8) issue a proposed Administrative Enforcement Order; and (9) in certain circumstances, “suspend, alter, amend, or revoke the license or certification of a regulated entity as permitted by the Public Utilities Act.”⁴ It is not clear under what statutory authority the Commission can delegate authority for all of these actions to Staff. Any delegated authority must be supported by the law. Further stakeholders should be afforded opportunities to comment on any proposed regulations that delegate the Commission’s authority to Staff.

Third, the Draft Policy was served on the service list for notice of amendments to the Commission’s Rules of Practice and Procedure. It is likely that there are many stakeholders with an interest in the Commission’s enforcement policy that are not on the service list for changes to Rules of Practice and Procedure. Therefore, Lyft respectfully suggests that, if the Commission intends to implement all or part of the Draft Policy as part of its enforcement practices, the necessary changes to regulations be noticed in a rulemaking proceeding in which all interested stakeholders are given proper notice and a meaningful opportunity for review and comment.

Lyft appreciates the invitation to provide its feedback on the Draft Policy for the Committee’s consideration. Lyft believes that the best way to address the concerns raised herein

² Draft Policy, pp. 8-10.

³ The Draft Policy defines “staff” as “division staff or such other staff as may be designated by the Executive Director or a Deputy Executive Director to carry out the functions involved in taking enforcement action.” Draft Policy, p. 1, n.1.

⁴ Draft Policy, pp. 5-14.

(and the comments submitted by other stakeholders) is to broadly circulate any proposed regulations implementing the Draft Policy to invite further review and comment or open a new rulemaking to the extent the Commission intends to implement the Draft Policy.

Respectfully submitted,

By: /s/ Aichi N. Daniel

Attorney for LYFT, INC.