BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., a corporation of the State of : A-2014-2415045

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 :

**INTERIM ORDER**

**ON PRELIMINARY OBJECTIONS:**

**EXECUTIVE TRANSPORTATION**

Lyft, Inc. (Applicant) filed an application for motor common carrier of persons in experimental service between points in Allegheny County, Pennsylvania on April 3, 2014:

This Application of Lyft, Inc. (“Lyft”) for an experimental service proposes to operate a peer-to-peer ride-sharing network using digital software to facilitate transactions between passengers and ridesharing operators using their own vehicles to provide transportation (known as a transportation network service) between points within Allegheny County, Pennsylvania, for the purpose of enhancing access to transportation alternatives, supplementing existing public transportation, reducing single occupancy vehicle trips, vehicle ownership and usage, and assisting the state in achieving reductions in greenhouse gas emissions.[[1]](#footnote-1)

Commission regulations permit certification of transportation providers for “experimental” service in order to “allow . . . a new, innovative or experimental type or class of common carrier service.”[[2]](#footnote-2)

Notice of the application was published in the Pennsylvania Bulletin on April 19, 2014. The notice provided that the deadline for the filing of protests was May 5, 2014.[[3]](#footnote-3) On May 5, 2014, Executive Transportation t/d/b/a Luxury Sedan Service (Protestant) filed a protest to the application.[[4]](#footnote-4) The Applicant filed preliminary objections which seek dismissal of the protest. Protestant filed an amended protest on June 6, 2014, but did not answer the preliminary objections of the Applicant.

DISCUSSION

**Legal Standard**

Pursuant to the Commission’s rules of procedure, a protest to an application for transportation authority is treated as a pleading and an applicant may file a motion as provided by Section 5.101, relating to preliminary objections. The grounds for preliminary objection are limited:

§ 5.101. Preliminary objections.

(a) Grounds. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[5]](#footnote-5) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[6]](#footnote-6) Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.[[7]](#footnote-7) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.[[8]](#footnote-8) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[9]](#footnote-9)

**The Protest**

The Protestant holds limousine authority between points in Pennsylvania. The Protestant objects to the grant of experimental authority to the Applicant on a variety of grounds: that the Applicant will only act as a broker and that it is using uncertificated providers and that experimental authority is not appropriate because it is really offering conventional motor carrier services, that the application fails to conform to the Commission’s insurance regulations and that the grant of authority to the Applicant will adversely impact the Protestant’s operations and is therefore not in the public interest.

The Applicant’s preliminary objection seeks dismissal of the protest because the Protestant failed to attach copies of its operating authority to its protest and also because the Protestant fails to adduce sufficient facts to establish its standing to protest.

Generally, Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by an applicant in order to have standing to protest an application.[[10]](#footnote-10) The Applicant contends that the Protestant does not hold a certificate for experimental service and therefore it has no authority in conflict with that proposed by the Applicant. The primary difference in service cited by the Applicant is the method of hail.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency.[[11]](#footnote-11) “In simple terms, "standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court.”[[12]](#footnote-12) Accordingly, we reject the notion that only carriers holding experimental authority which uses “App-based” technology are in a position to challenge the application. By its very nature, the purpose of experimental authority is to provide the Commission with the flexibility to consider “innovative” transportation schemes that do not fit within the other types of service defined by the Commission’s regulations:

In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service. An application for a certificate or amendment shall state that it is an application for an experimental service. Holders of experimental certificates shall abide by this chapter except those which the Commission shall explicitly state do not apply. Holders of experimental certificates shall abide by any additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate. A certificate for experimental service shall be valid only until the service is abandoned, until 2 years have elapsed from the time the certificate was approved or until the Commission enacts amendments to this chapter pertaining to the new class of service represented by the experimental service, whichever event occurs first.[[13]](#footnote-13)

The regulation provides the Commission with the discretion to apply the regulatory requirements from any of the other classes of transportation authority and to also create additional requirements, depending on the details of the service proposed.[[14]](#footnote-14) To adopt the narrow view of standing espoused by the Applicant would be so limiting, that virtually no carriers would be in a position to protest.

The application provides that the vehicles which will be eligible to participate in the Applicant’s transportation program will include “street-legal coupes, sedans or light-duty vehicles, including without limitation, vans, minivans, sport utility vehicles (“SUVs”), hatchbacks, convertibles, and pickup trucks.” The application does not explicitly state that there would be any particular restriction on the transportation, i.e. that it would be exclusive or non-exclusive, that the transportation would exclude trips to and from airports or that vans and minivans would only transport one person at a time. Indeed, read as a whole, it appears that the Applicant would use the proposed service to meet nearly any sort of transportation need sought. The Protestant holds authority which provides transportation services similar to that which may be provided by the Applicant, under the auspices of traditional call or demand, paratransit or airport transfer authority. Therefore, the application presents at least a potential conflict with the Protestant’s authority and the preliminary objection based on standing will be dismissed.

The Applicant also seeks dismissal of the protest because the Protestant failed to attach actual copies of its operating authority to its protest. Section 3.381(c) of the Commission’s regulations sets forth the information that must be included in a protest to an application for authority:

(c) *Protests*

(1) *Applications for passenger or household goods in use authority.*

(i) *Content and effect.*

(A) A person objecting to the approval of an application shall file with the Secretary and serve upon the applicant and the applicant’s attorney, if any, a written protest which shall contain the following:

. . . .

(V) A list of all Commission docket numbers under which the protestant operates, accompanied by a copy of any portion of the protestant’s authority upon which its protest is predicated.

While it could be said that the Applicant’s objection to the protest is overly technical given the description of the authority provided in the protest, we are constrained to agree that the regulation does require a copy of the Commission order or certificate of public convenience which verifies that the statement of authority provided in the protest is correct. However, the Protestant provided sufficient information in the amended protest for the Applicant to object and seek dismissal on substantive grounds, that we will not dismiss the protest for this minor failure to conform to the rules. Rather, we will require the Protestant to amend its protest within ten days of entry of this order to include the actual copies required by Section 3.381(c)(1)(i)(A)(V).[[15]](#footnote-15)

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Applicant failed to demonstrate that the Protestant did not adduce sufficient facts in its protest to assert standing to challenge the application.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection of Lyft, Inc. to dismiss the protest of Executive Transportation Company, t/d/b/a Luxury Sedan Service is dismissed.

. 2. That the Protestant shall amend its protest to include copies of any Commission order or certificate of public convenience which describes any portion of the Protestant’s authority upon which its protest is predicated within ten days of entry of this order.

Date: June 25, 2014

Mary D. Long

Administrative Law Judge

Jeffrey A. Watson

Administrative Law Judge

**A-2014-2415045 – APPLICATION OF LYFT INC FOR MOTOR COMMON CARRIER OF PERSONS IN EXPERIMENTAL SERVICE FOR ALLEGHENY COUNTY**

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1. Application at Attachment A, p. 1. [↑](#footnote-ref-1)
2. 52 Pa.Code § 29.352. [↑](#footnote-ref-2)
3. 44 Pa.B. 2493 (April 19, 2014). [↑](#footnote-ref-3)
4. Numerous others filed protests as well. The preliminary objections to the other protests will be resolved by separate order. [↑](#footnote-ref-4)
5. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

   [↑](#footnote-ref-5)
6. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). [↑](#footnote-ref-6)
7. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

   [↑](#footnote-ref-7)
8. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

   . [↑](#footnote-ref-8)
9. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008). [↑](#footnote-ref-9)
10. *Application of Germantown Cab Company,* PUC Docket No. A-2012-2295131 (Initial decision served August 23, 2012) (and the cases cited therein). [↑](#footnote-ref-10)
11. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co*., 75 Pa. PUC 598, 603 (1991). [↑](#footnote-ref-11)
12. [*In re Milton Hershey School*, 867 A.2d 674, 683 (Pa.Cmwlth. 2005)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=867+A.2d+674%2520at%2520683), *reversed on other grounds*, 911 A.2d 1258 (Pa. 2006) (citing *Baker v. Carr*, 369 U.S. 186 (1962)). [↑](#footnote-ref-12)
13. 52 Pa.Code § 29.352. [↑](#footnote-ref-13)
14. 52 Pa.Code §§ 29.351-29.352. [↑](#footnote-ref-14)
15. See 52 Pa.Code § 5.101(h). [↑](#footnote-ref-15)