



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 27, 2014

A-2014-2415045

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.

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, **and** 2) mailed or hand-delivered to each party of record, **within twenty (20) days** of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will **not** be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

Replies to Exceptions, if any, must be **filed** with the Secretary of the Commission and **served** on each party of record and the Commission's OSA, in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chiavetta
Secretary

Enclosures
Certified Mail
Receipt Requested

**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 :

**INITIAL DECISION DISMISSING THE PROTESTS OF
CONCORD LIMOUSINE AND BLACK TIE LIMOUSINE**

Before
Mary D. Long
Jeffrey A. Watson
Administrative Law Judges

The preliminary objection of an applicant for experimental service to dismiss the protests of two carriers whose protests did not conform to the Commission's regulations is sustained. The protests did not include the carriers' business address or a list of Commission docket numbers under which the protestants operate.

PROCEDURAL HISTORY

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

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 the Commonwealth of 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

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

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 On May 2, 2014, Black Tie Limousine and Concord Limousine (Protestants) filed protests to the application.⁴ The Applicant filed preliminary objections which seek dismissal of the protest. No answers were filed.

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 Application at Attachment A, p. 1.

² 52 Pa.Code § 29.352.

³ 44 Pa.B. 2493 (April 19, 2014).

⁴ Numerous others filed protests as well. The preliminary objections to the other protests will be resolved by separate order.

- (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 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 Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.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 A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.⁹

⁵ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

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).

⁷ *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

⁸ *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

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).

The Protest

According to the protest of the Concord Limousine and Black Tie Limousine, they hold statewide limousine authority. The Protestants object to the grant of experimental authority to the Applicant on a variety of grounds: that the Applicant will only act as a broker; that it is using uncertificated providers; 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 Protestants' operations and is therefore not in the public interest.

The Applicant's preliminary objection seeks dismissal of the protest because the Protestants fail to adduce sufficient facts to establish their standing to protest. The Applicant also complains that the protest should be dismissed because it fails to include the Protestants' business addresses, Commission docket numbers under which the Protestants operate or copies of its operating authority.

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:

....

(II) The name, business address and telephone number of the protestant.

....

(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.

In our decisions on other protests on this docket, we have noted that the protestant was able to survive preliminary objection because the protestant provided sufficient information concerning its Commission authority to permit the Applicant to file a meaningful preliminary objection. Here, the Protestants merely included a statement of their authority, but neither noted the Commission docket numbers nor did they include copies of the relevant Commission order. Concord Limousine filed what was purported to be an amended protest on June 6, 2014. However, the amended protest also fails to include any of the information required by the regulation. We find this protest substantially fails to conform to the Commission regulation and it must be dismissed at this time.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. Commission regulations require that a protest should include the protestant's business address, list of Commission docket numbers under which the protestant operates, and a copy of the Commission order or certificate of public convenience.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of Lyft, Inc. to dismiss the protests of Concord Limousine and Black Tie Limousine are sustained.

2. That the protests of Concord Limousine and Black Tie Limousine are dismissed.

Date: June 26, 2014

/s/
Mary D. Long
Administrative Law Judge

/s/
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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Representing Protestants:

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Black Tie Star Limousine, Inc.

Accepts E-service

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