**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA, LLC, a limited liability company : A-2014-2416127

of the State of Delaware, for the right to begin to transport, :

by motor vehicle, persons in the experimental service :

of shared-ride network for passenger trips between points in :

Allegheny County :

**INITIAL DECISION**

**DISMISSING THE PROTEST OF**

**JB TAXI LLC**

Before

Mary D. Long

Jeffrey A. Watson

Administrative Law Judges

The preliminary objections which seek dismissal of a carrier due to lack of standing to protest a transportation application will be sustained and the protests dismissed, where the carrier did not have Commission authority to operate in the service territory requested by the applicant.

PROCEDURAL HISTORY

Rasier-PA, LLC[[1]](#footnote-1) (Applicant) filed an application for motor common carrier of persons in experimental service between points in Allegheny County, Pennsylvania on April 14, 2014:

Applicant proposes to operate a ride-sharing network service for passenger trips between points within Allegheny County, Pennsylvania.

Applicant proposes to sue a digital platform to connect passengers to independent ride-sharing operators (“Operators”) with whom Applicant intends to contract. Operators will use their personal, noncommercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the Uber technology to generate leads from riders who need transportation services. Applicant does not own vehicles, employ drivers or transport passengers.[[2]](#footnote-2)

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.”[[3]](#footnote-3)

Notice of the application was published in the Pennsylvania Bulletin on April 26, 2014. The notice provided that the deadline for the filing of protests was May 12, 2014.[[4]](#footnote-4) On May 7, 2014, JB Taxi LLC (Protestant) filed a protest and a petition to intervene.[[5]](#footnote-5) The Applicant filed preliminary objections on June 2, 2014, which seek dismissal of the protests because the Applicant states that the Protestant lacks standing to protest the application. The Protestant filed an answer to the preliminary objections on June 13, 2014.

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 proved 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.[[6]](#footnote-6) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[7]](#footnote-7) Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.[[8]](#footnote-8) 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.[[9]](#footnote-9) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[10]](#footnote-10)

**The Protest**

The Protestant holds call or demand authority in the counties of Beaver, Lawrence, Mercer and Crawford. The Protestant objects to the grant of experimental authority to the Applicant because the grant of authority to the Applicant will adversely impact the Protestant’s business and result in unfair competition. The Protestant also contends that the Applicant does not meet the Commission’s fitness requirements.

 The Applicant’s preliminary objection seeks dismissal of the protest because the Protestant fails to adduce sufficient facts to establish its standing to protest. In its answer, the Protestant argues the service proposed by the Applicant is sufficiently similar to the service provided by the Protestant to create a conflict with the Protestant’s authority and adversely impact its business.

**The Preliminary Objection**

 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.[[11]](#footnote-11) 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: the proposed service will utilize a “digital platform” to connect drivers with passengers rather than the usual method of communication by telephone.

 Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency.[[12]](#footnote-12) “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.”[[13]](#footnote-13) 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.[[14]](#footnote-14)

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.[[15]](#footnote-15) 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.

 However, the Protestant does not hold operating authority within the service territory requested in the application. In its answer the Protestant makes a general allegation that drivers using the app may serve patrons outside Allegheny County. This allegation alone is not sufficient to find that the Protestant has a direct interest in the application. Therefore, the protest will be dismissed.

 The Protestant also seeks leave to intervene, which was not specifically addressed in the Applicant’s preliminary objection. An intervenor need only demonstrate an “interest,” but need not demonstrate the same level of immediacy or causation that is required of a protestant.[[16]](#footnote-16) While we recognize that intervention requires a lesser degree of interest than that required to protest, the petition to intervene must also fail. There are no allegations of fact in either the protest or the petition to intervene that the Protestant’s service in Beaver, Lawrence, Mercer and Crawford Counties may be affected by a decision on the current application. Nor are the interests articulated by the Protestant not adequately represented by other parties in this proceeding.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. JB Taxi LLC has failed to demonstrate that they possess any interest in the subject matter of this proceeding which is direct, immediate, and substantial.

3. The protest of JB Taxi LLC fails to set forth sufficient facts to support their standing to challenge the application. 52 Pa.Code § 5.52(b); 5.101(a)(7).

4. It is just, reasonable and in the public interest that the protests filed be dismissed without a hearing. 66 Pa.C.S. § 703(b).

5. JB Taxi LLC fails to meet the standard for intervention in this proceeding. 52 Pa.Code § 5.72.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection of Rasier-PA LLC seeking dismissal of the protest of JB Taxi LLC is sustained.

2. That the protest of JB Taxi LLC is dismissed.

3. That the petition to intervene of JB Taxi LLC is denied.

Date: July 1, 2014 /s/

 Mary D. Long

 Administrative Law Judge

 /s/

 Jeffrey A. Watson

 Administrative Law Judge

1. Rasier-PA LLC, is a wholly owned subsidiary of Uber Technologies, Inc. [↑](#footnote-ref-1)
2. Application at ¶ 10-11. [↑](#footnote-ref-2)
3. 52 Pa.Code § 29.352. [↑](#footnote-ref-3)
4. 44 Pa.B. 2604 (April 26, 2014). [↑](#footnote-ref-4)
5. Several others filed protests as well. The preliminary objections to the other protests will be resolved by separate order. [↑](#footnote-ref-5)
6. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

 [↑](#footnote-ref-6)
7. *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-7)
8. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

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

 [↑](#footnote-ref-9)
10. *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-10)
11. *Application of Germantown Cab Company,* PUC Docket No. A-2012-2295131 (Initial decision served August 23, 2012) (and the cases cited therein). [↑](#footnote-ref-11)
12. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co*., 75 Pa. PUC 598, 603 (1991).

 [↑](#footnote-ref-12)
13. [*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-13)
14. 52 Pa.Code § 29.352. [↑](#footnote-ref-14)
15. 52 Pa.Code §§ 29.351-29.352. [↑](#footnote-ref-15)
16. 52 Pa.Code § 5.72. [↑](#footnote-ref-16)