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 :

**INTERIM ORDER DENYING THE PRELIMINARY OBJECTIONS**

**OF RAISER-PA LLC TO THE PROTEST OF**

**EXECUTIVE TRANSPORTATION, INC., t/a LUXURY SEDAN**

 On April 14, 2014, Rasier-PA LLC, a wholly owned subsidiary of Uber Technologies, Inc., (Rasier or Applicant) filed an application requesting the issuance of a certificate of public convenience evidencing approval to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania, pursuant to 52 Pa. Code § 29.352.

 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.”[[1]](#footnote-1)

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. On May 12, 2014, Executive Transportation t/a Luxury Sedan (Protestant) filed a protest to the application.[[2]](#footnote-2) On June 2, 2014, the Applicant filed preliminary objections which seek dismissal of the protest. Protestant filed an Answer to Preliminary Objections on June 12, 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 provided by Section 5.101, relating to preliminary objections. The grounds for preliminary objection are limited, as follows:

§ 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.[[3]](#footnote-3) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[4]](#footnote-4) Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.[[5]](#footnote-5) 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.[[6]](#footnote-6) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[7]](#footnote-7)

**The Protest**

 The Protestant holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission (Commission) and the Philadelphia Parking Authority (PPA or Authority) authorizing it to transport persons, by motor vehicle, in limousine service in Philadelphia and throughout the Commonwealth. 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 will not provide any transportation service itself, that the proposed service does not differ from other motor carrier services and therefore does not qualify as an experimental service within the classification for service provided by common carriers of passengers, and because it proposes to facilitate commercial transportation services under ridesharing arrangements without certificated service providers.

The Applicant’s preliminary objection seeks dismissal of the protest because it asserts Protestant does not have standing to challenge the application, and that the protest is legally insufficient as it fails to state a claim upon which the Commission can grant relief.

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.[[8]](#footnote-8) The Applicant contends that the Protestant, who possesses limousine service authority but does not hold a certificate for experimental service, has no authority in conflict with that proposed by the Applicant. Applicant argues, under Rasier’s proposal, riders would request transportation through the internet or a mobile application on their smartphones. Applicant contends, since Rasier’s application also proposes experimental service that is distinguishable from the service currently offered by Protestant, Protestant’s existing limousine authority does not confer standing upon which to oppose the application. 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.[[9]](#footnote-9) “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.”[[10]](#footnote-10) 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.[[11]](#footnote-11)

 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.[[12]](#footnote-12) 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 vans, minivans, sport utility vehicles, 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, airport transfer or limousine 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, alleging Protestant has failed to state a claim upon which relief may be granted. Applicant further avers that a hearing in this matter is not necessary and would not serve the public interest.[[13]](#footnote-13) Applicant avers that the Protestant fails to make factual averments to support the need for a hearing in this matter. Applicant argues that Protestant simply offers conclusions of law, unwarranted inferences from facts, argumentative allegations and expressions of opinion. Applicant further contends that the claims advanced by Protestant were previously addressed by the Commission in the matter of the *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order entered on May 22, 2014) (Yellow Cab Order).

 In the instant case, Protestant has averred facts sufficient to set forth its position that Applicant will act only as a broker and will not provide any transportation service itself. Protestant asserts that the Commission may not authorize a person or corporation to provide motor carrier service where the person or corporation only proposes to procure such service on behalf of third parties, but does not propose to provide such service itself. Protestant further avers that the proposed service does not differ, in any meaningful way, from other motor carrier services, and therefore, does not qualify as “experimental service” by common carriers of passengers. Under the circumstances, Protestant has made sufficient averments in its protest to warrant a hearing or further proceedings in this matter. Accordingly Applicant’s preliminary objection must be denied.

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.
3. The Applicant failed to demonstrate that the protest is legally insufficient or that Protestant has failed to state a claim upon which the Commission may grant relief.

ORDER

THEREFORE,

IT IS ORDERED:

 1. That the preliminary objection of Rasier-PA LLC, a wholly owned subsidiary of Uber Technologies, Inc. to dismiss the protest of Executive Transportation, Inc., t/a Luxury Sedan is dismissed.

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Date: July 1, 2014

 Mary D. Long

 Administrative Law Judge

 Jeffrey A. Watson

 Administrative Law Judge

**A-2014-2416127 – APPLICATION OF RASIER-PA LLC, a wholly owned subsidiary of uber technologies, inc., FOR A CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE AN EXPERIMENTAL RIDE-SHARING NETWORK SERVICE**

KAREN O MOURY ESQUIRE

BUCHANAN INGERSOLL & ROONEY PC

409 NORTH SECOND STREET SUITE 500

HARRISBURG PA 17101-1357

717.237.4820

*Representing Rasier-PA LLC*

***Accepts E-service***

DAVID W DONLEY ESQUIRE

3361 STAFFORD STREET

PITTSBURGH PA 15204-1441

412.331.8998

*Representing JB Taxi LLC t/a County Taxi Cab*

***Accepts E-service***

MICHAEL S HENRY ESQUIRE

2336 SOUTH BROAD STREET

PHILADELPHIA PA 19145

215.218.9800

*Representing:*

*Concord Limousine, Inc.*

*Executive Transportation, Inc. t/a Luxury Sedan*

***Accepts E-service***

SAMUEL R MARSHALL PRESIDENT

THE INSURANCE FEDERATION OF PENNSYLVANIA INC

1600 MARKET STREET SUITE 1720

PHILADELPHIA PA 19103

215.665.0500

*Representing The Insurance Federation of Pennsylvania, Inc.*

RAY F MIDDLEMAN ESQUIRE

PAUL S GUARNIERI ESQUIRE

MALONE MIDDLEMAN PC

WEXFORD PROFESSIONAL BUILDING III

11676 PERRY HIGHWAY SUITE 3100

WEXFORD PA 15090

724.934.6888

*Representing Pennsylvania Association for Justice*

***Accepts E-service***

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

 [↑](#footnote-ref-3)
4. *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-4)
5. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

 [↑](#footnote-ref-5)
6. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

. [↑](#footnote-ref-6)
7. *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-7)
8. *Application of Germantown Cab Company,* PUC Docket No. A-2012-2295131 (Initial decision served August 23, 2012) (and the cases cited therein). [↑](#footnote-ref-8)
9. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). [↑](#footnote-ref-9)
10. [*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-10)
11. 52 Pa.Code § 29.352. [↑](#footnote-ref-11)
12. 52 Pa.Code §§ 29.351-29.352. [↑](#footnote-ref-12)
13. 66 Pa.C.S. § 703(b). [↑](#footnote-ref-13)