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May 6, 2015

FILED ELECTRONICALLY

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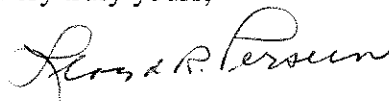
**Re: Application of Rasier-PA, LLC
A-2015-2469287**

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dear Secretary Chiavetta:

We file herewith electronically on behalf of Protestant, Billtown Cab Co., Inc. its Answer to Applicant's Preliminary Objections to its Protest. A Certificate of Service is attached to the Answer.

Very truly yours,



Lloyd R. Persun

LRP:pg
Attachment

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: : A-2015-2469287
:
Application of Rasier-PA, LLC : **FILED ELECTRONICALLY**

BILLTOWN'S ANSWER TO APPLICANT'S PRELIMINARY OBJECTIONS

AND NOW, this 6th day of May, 2015, pursuant to 52 Pa. Code §5.101(f), BILLTOWN CAB CO., INC. (Billtown), a Protestant, by its attorneys, files the following Answer to Applicant's Preliminary Objections:

1-9. Denied. The allegations in these paragraphs constitute conclusions of law and, therefore, require no answer. The Application speaks for itself. The Application seeks authority to serve territories different than the Applications of Rasier-PA, LLC, Docket Nos. A-2014-2416127 ("Rasier I") & A-2014-2424608 ("Rasier II"), which the Commission granted by its Orders entered December 5, 2014.¹ The Commission's grant of those Applications is not controlling in this case. The Commission may not infer need in this case from Applicant's evidence of need in the different territories sought in Rasier I and Rasier II, which also involved different parties. Applicant must demonstrate at hearing by reliable, probative and substantial evidence public demand or need for the service which it proposes in this Application. 66 Pa. C.S.A. §332; 52 Pa. Code §41.14(a). Although as an existing carrier Applicant is presumed fit, Re: V.I.P. Travel Service, Inc., 56 Pa. P.U.C. 625 (1982), the Protestants are entitled to rebut that

¹ Rasier I and Rasier II are not final. Many protestants appealed the Commission's Orders to the Commonwealth Court of Pennsylvania. Executive Transportation Co. et al. v. Pa. PUC, Nos. 252 & 253 CD 2015. The Court may modify or reverse the Commission's Rasier I and Rasier II decisions.

presumption at hearing in an on-the-record proceeding after discovery. Application of Newhurst, Docket No. A-00093160, F.1, Am-E (February 3, 1995). Billtown has standing. Its Protest is not deficient.

10. Denied. The Application speaks for itself.

11. Denied. The Commission's Regulation, 52 Pa. Code §29.352, speaks for itself. See also, Application of Lyft, Inc., Docket No. A-2014-2415047, Interim Order (June 24, 2014) issued by Administrative Law Judges Long and Watson holding that Billtown possessed standing through its paratransit, call or demand or airport transfer authority to protest an experimental or transportation network service application.²

12. Admitted.

13. Denied. The Application speaks for itself.

14. Admitted, except that the notice did not include as part of the Application territory the County of Allegheny, the County of Montour or that portion of the County of Luzerne which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County. 45 Pa. Bulletin 1474-1475 (March 21, 2015). The notice is defective. The Commission must publish a new notice showing the correct territory or, in the alternative, dismiss the Application.

15. Admitted.

² The Interim Order is attached hereto as Appendix A.

16. Admitted.

17. Denied. The Preliminary Objections speak for themselves. Billtown's Protest is legally sufficient and sufficiently specific. Billtown possesses standing.

18-21. Denied. The Commission's Rules of Administrative Practice and Procedure and the case law applicable thereto speak for themselves.

22-33. Denied. The allegations of these paragraphs are legal conclusions and, therefore, require no answer. Billtown's Protest is legally sufficient. The Protest satisfies notice pleading and also establishes a territorial conflict between Applicant's proposed service and Billtown's existing and proposed service. See, ALJs' Lyft Interim Order, finding that the applicant's experimental service was "sufficiently similar to the service [call or demand, airport transfer and paratransit] provided by [Billtown] to create a conflict with [Billtown's] authority." Interim Order at 4-6.³ The Commission's findings of fact and conclusions of law in Rasier I and Rasier II are not binding in this case which involves different parties and different territory. Each case is decided on its own record after every party has the opportunity to present testimony and to conduct cross-examination. 66 Pa. C.S.A. §332.

Applicant must demonstrate by reliable, probative and substantial evidence that its proposed service is responsive to public demand or need. 52 Pa. Code §41.14(a); 66 Pa. C.S.A. §332(b). The Commission retained the need criterion for experimental service, unlike for household goods service. By rulemaking, the Commission eliminated the need criterion for

³ Billtown's Protest in Lyft was worded similarly to its Protest in this case.

household goods carriers. It did not do so for experimental service carriers. Compare Rasier II and 45 Pa. Bulletin 2219-2220 (May 2, 2015).

34. Denied. Billtown's Protest, certificated operating authority and proposed operating authority speak for themselves. Protest ¶¶3, 4, Exs. "A" & "B".

35-41. Denied. The allegations in these paragraphs constitute conclusions of law and, therefore, require no answer. In Lyft, supra, the ALJs by their Interim Order (June 24, 2014) rejected the same standing argument which Applicant advances instantly. The ALJs ruled:

. . . [T]he service proposed by the Applicant [transportation network service] is sufficiently similar to the service provided by the Protestant [Billtown's call or demand, paratransit or airport transfer service] to create a conflict with the Protestant's [Billtown's] authority.

* * *

. . . 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 and application [Citations omitted]. The Applicant contends that the Protestant [Billtown] does not hold a certificate for experimental service and therefore it has no authority in conflict with that proposed by the Applicant.

* * *

. . . [w]e 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 denied by the Commission's regulations [citing 52 Pa. Code §29.352]

* * *

The regulation [52 Pa. Code §29.352] 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. 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.

* * *

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. Interim Order at 4-6 (Emphasis added).

App-based technology is a method to dispatch drivers and taxis, like telephone and radio. It does not make Applicant's proposed service new or innovative, any more than "smart meter technology" used to read water, electric and gas meters remotely or on a drive-by basis distinguishes those services from water, electric and gas services whose consumption historically was recorded by meter readers on foot. Applicant's claim to experimental service is an attempt to avoid the evidentiary criteria which common carrier applicants must prove,

especially in contested on-the-record proceedings – public demand or need for the proposed service, for example. 52 Pa. Code §41.14.⁴

In Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X, Docket No. A-2014-2410269, 2014 WL 2427000 (May 22, 2014), the Commission was not required to address these criteria or any conflict between the applicant’s proposed service and the existing call or demand or paratransit service of any protestant. The application was not opposed. Testimony was not taken. Yellow X sought authority to originate or terminate service only within Allegheny County, excluding trips originating from the Pittsburgh International Airport, with no impact on existing carriers, as the absence of protests demonstrates. By comparison, Applicant seeks authority impacting the operations of at least three different carriers in thinly populated areas.

Applicant’s styling its proposed service “experimental” does not differentiate its proposed service from Billtown’s existing call or demand, paratransit or airport transfer service. The Application, Protest and Preliminary Objections suggest that the parties’ existing and proposed services are similar and conflict in the Counties of Clinton and Lycoming and from points in those counties to points in Pennsylvania and return. Lyft, supra.

⁴ Applicant must meet this burden of proof by presenting reliable, probative and substantial evidence. 66 Pa. C.S.A. §332(a), (b). Thinly populated areas like Lycoming County lack the passenger base to support multiple carriers. The Administrative Law Judge may judicially notice the population of the Application area, in whole and in part. 66 Pa. C.S.A. §332(e).

A genuine issue of material fact is whether the services are **in fact** different. Applicant bears the burden of proving that difference by reliable, probative and substantial evidence. Only oral testimony under oath with the right of cross-examination and rebuttal in an on-the-record proceeding will provide the Administrative Law Judge credible facts to make that determination. 66 Pa. C.S.A. §§332(c), (d).

Billtown filed an Application with the Commission seeking authority to transport by motor vehicle persons in experimental service (known as transportation network service) between points in the County of Lycoming and from points in that county to points in Pennsylvania and return, excluding areas under the jurisdiction of the Philadelphia Parking Authority (Docket No. A-2014-2428632). A true and correct copy of the Application is attached to the Protest as Exhibit “B” and made a part thereof. Billtown’s Application conflicts with a portion of the operating authority proposed by Applicant. This conflict also demonstrates Billtown’s standing. Re: Francis M. Bauer, 50 Pa. P.U.C. 825 (1977) (late filed protest allowed where protestant had an application for conflicting authority pending).⁵

42-45. Denied. The Protest satisfies the requirements of the Commission’s regulation. 52 Pa. Code §3.381(c)(1)(A). Protest ¶¶1-9, Exs. “A” & “B”. Approval of the Application will impair the operations of existing carriers – Billtown, Prime Time Limo Service

⁵ The period to protest Billtown’s Application expired. The protests were withdrawn. The Application is before the Commission for decision on modified procedure. The ALJ may judicially notice these facts. 66 Pa. C.S.A. §332(e).

and MTR Transportation, Inc. – by duplicating their equipment and drivers and diverting their ridership in their thinly populated service territories, thereby threatening unrestrained and destructive competition. The Commission announced this test for impairment in Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262, 286 (1990), citing subsection 41.14(c). See also, Rasier II at 14. Protestants are entitled to present evidence at hearing to establish impairment. Applicant is entitled to discovery on the issue.

The Application area conflicts squarely with Billtown’s existing and proposed operations in the same area. Protest ¶¶3, 4, Exs. “A” & “B”. For this reason, Billtown is not aware of a restrictive amendment which would satisfy its interest, but is willing to discuss with Applicant the possibility of such a restrictive amendment, if Applicant so desires. The Regulation does not require Billtown to propose a restriction or an amendment if none appears to exist in light of the territorial conflict. 52 Pa. Code §3.381(c)(1)(A)(VI).

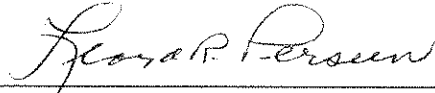
46. If the ALJ sustains or grants Applicant’s Preliminary Objections in whole or in part, Billtown is entitled to file an Amended Protest within ten (10) days of service of the ALJ’s Order sustaining or granting the Preliminary Objections, either in whole or in part. 52 Pa. Code §5.101(h).

47. Applicant and the Protestants should be encouraged to attempt to resolve this Application through mediation. 52 Pa. Code §§41.31, 41.32.

WHEREFORE, Billtown respectfully requests that the Administrative Law Judge enter an Order overruling and denying Applicant’s Preliminary Objections, directing the parties

to attempt to resolve this Application through mediation, setting a Resolution Conference and permitting Billtown to participate therein as a Protestant and party in interest.

Respectfully submitted,



Lloyd R. Persun, Esquire

Persun & Heim, P.C.

P.O. Box 659

Mechanicsburg, PA 17055-0659

(717) 620-2440

Attorneys for Billtown Cab Co., Inc., Protestant

CERTIFICATE OF SERVICE

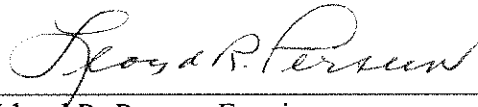
I hereby certify that a true and correct copy of the foregoing document has been served upon each of the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code §§1.54 and 1.59:

VIA EMAIL AND FIRST-CLASS MAIL

Karen O. Moury, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

VIA FIRST CLASS MAIL

Charles E. Rainey, Jr., Chief Admin. Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265



Lloyd R. Persun, Esquire
Attorney for Billtown Cab Co., Inc.

May 6, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Lyft, Inc., a corporation of the State of : A-2014-2415047
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 Pennsylvania :

**INTERIM ORDER
ON PRELIMINARY OBJECTIONS:
BILLTOWN CAB CO., INC. PROTEST**

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

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

¹ Application at Attachment A, p. 1.

² 52 Pa.Code § 29.352.

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, Billtown Cab Co., Inc. (Protestant) filed a protest⁴ to the application.⁵ The Applicant filed preliminary objections which seek dismissal of the protest. Protestant filed its answer to the preliminary objection on June 6, 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:

§ 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.

³ 44 Pa.B. 2493 (April 19, 2014).

⁴ The Secretary's Bureau returned the protest for an original signature. It appears that this deficiency was remedied promptly and the Secretary deemed the protest properly filed.

⁵ Numerous others filed protests as well. The preliminary objections to the other protests will be resolved by separate order.

(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 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 Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.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 A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.¹⁰

The Protest

The Protestant holds several types of operating authority from the Commission generally in a service territory in the area of Williamsport, Lycoming County as a call or demand, paratransit and parcel and package delivery carrier. The Protestant also holds airport transfer authority from points in Lycoming and Clinton County to various regional airports located in central Pennsylvania and Philadelphia. The Protestant objects to the grant of

⁶ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

⁷ *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 1996).

⁸ *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002).

⁹ *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlt. 1997).

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).

experimental authority to the Applicant because there is no established need for the service, and the entry of a new carrier conflicts with and will impair the Protestant's operation. Protestant also identifies several technical deficiencies in the application, including an improper identification of the Applicant, improper advertisement of the application, and that the application for statewide authority should be dismissed to the extent it conflicts with the Applicant's application in Allegheny County.¹¹

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. In its answer, the Protestant argues that it provided adequate information regarding its authority and that there are sufficient facts set forth in its application to support its standing to protest the application. Specifically, 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.

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.¹² 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 and the exclusivity of the service.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency.¹³ "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

¹¹ See A-2014-2415045.

¹² *Application of Germantown Cab Company*, PUC Docket No. A-2012-2295131 (Initial decision served August 23, 2012) (and the cases cited therein).

¹³ *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991).

degree where he or she can properly bring an action before the court.”¹⁴ 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.¹⁵

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.¹⁶ 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

¹⁴ *In re Milton Hershey School*, 867 A.2d 674, 683 (Pa.Cmwlth. 2005), *reversed on other grounds*, 911 A.2d 1258 (Pa. 2006) (citing *Baker v. Carr*, 369 U.S. 186 (1962)).

¹⁵ 52 Pa.Code § 29.352.

¹⁶ 52 Pa.Code §§ 29.351-29.352.

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. The Protestant answers that it is not required to include an “actual” copy of the Commission’s orders granting its operating authority. Instead, it included as “Exhibit A” a description of each type of authority held by the Protestant with a citation to a docket number.

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 protest for the Applicant to object to the protest 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).¹⁷

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:

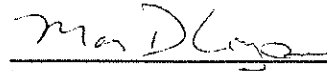
1. That the preliminary objection of Lyft, Inc. to dismiss the protest of Billtown Cab Co., Inc. is dismissed.

¹⁷ See 52 Pa.Code § 5.101(h).

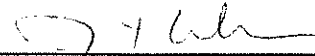
2. That Billtown Cab Co., Inc. shall amend its protest to include copies of any Commission order or certificate of public convenience which describes any portion of the Protestant's authority upon which its protest is predicated within ten days of entry of this order.

3. That failure of Billtown Cab Co., Inc. to amend its protest as directed by Paragraph 2 of this Order will result in the dismissal of its protest.

Date: June 24, 2014



Mary D. Long
Administrative Law Judge



Jeffrey A. Watson
Administrative Law Judge