



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

ISSUED: February 15, 2001

REFER TO OUR FILE  
 IN REPLY PLEASE

A-00117214

DOCUMENT  
 FOLDER

LIBERTY AMBULANCE RESPONSE INC  
 ROSS PACK PROFESSIONAL BLDG  
 51 GIBRALTAR DRIVD  
 SUITE 1F  
 MORRIS PLAINS NJ 07950-1254

Application of Liberty Ambulance Response, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Allison K. Turner. This decision is being issued and mailed to all parties on the above specified date.

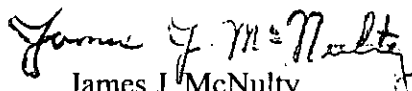
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION, 2<sup>ND</sup> FLOOR, KEYSTONE BLDG, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 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.)".

If no exceptions are received within twenty (20) days, 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,

  
 James J. McNulty  
 Secretary

law  
 Encls.  
 Certified Mail  
 Receipt Requested

JAMES W PATTERSON ESQUIRE  
 SAUL EWING LLP  
 3800 CENTRE SQUARE WEST  
 PHILADELPHIA PA 19102

BARNETT SATINSKY ESQUIRE  
 FOX ROTHSCHILD O'BRIEN & FRANKEL LLP  
 2000 MARKET STREET 10<sup>TH</sup> FLOOR  
 PHILADELPHIA PA 19103-3291

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Liberty Ambulance Response, Inc. :  
For the right to begin to transport, as a common carrier, :  
by motor vehicle, persons in paratransit service, : Docket No.  
between points in the counties of Delaware, :  
Montgomery and Philadelphia, limited to the : A-00117214  
transportation of persons who require assistance for :  
personal mobility to or from the vehicle. :

**DOCKETED**  
FEB 16 2001

**INITIAL DECISION**

Before  
Allison K. Turner  
Administrative Law Judge

**DOCUMENT  
FOLDER**

**History of the Proceeding**

This application of Liberty Ambulance Response, Inc. (Applicant or Liberty) was filed on August 14, 2000, and published in the Pennsylvania Bulletin on September 27, 2000. Protests had to be filed by October 23, 2000.

On or about October 17, 2000, Suburban Transit Network, Inc., t/d/b/a TransNet (TransNet) and Willow Grove Yellow Cab Co., Inc. t/d/b/a Bux-Mont Transportation Services Co. (Bux-Mont) (Protestant(s) or Joint Protestants) filed their protests to the Application.

On or about October 18, 2000, Walsh Cab Co., Inc. (Walsh or Protestant) filed a protest against the Application.

On or about November 30, 2000, the Office of Administrative Law Judge (OALJ) sent a letter to the parties inquiring about their consent to participate in the mediation process. Apparently, no reply was made to this letter.

By hearing notice dated December 15, 2000, the Commission scheduled the application for a hearing to be held on Thursday, February 1, 2001, at 10:00 a.m. in the Philadelphia State Office Building. The case has been assigned to Administrative Law Judge Allison K. Turner (ALJ) for hearing and decision.

On or about November 6, 2000, TransNet and Bux-Mont propounded their First Set of Interrogatories upon Liberty. Under the Commission's rules, Liberty's responses were due within 20 days of service, or on or about November 30, 2000, including an allowance for service by first class mail.

On December 20, 2000, not having been served with any responses, TransNet and Bux-Mont filed their Motion of Joint Protestants to Compel Answers to their Interrogatories (Motion), seeking that Liberty be directed to provide Answers. If Applicant fails to respond to interrogatories, it may be subject to sanctions as provided by the Commission's regulations, up to and including dismissal of its Application. 52 Pa. Code §§5.371-5.372.

Under the Commission's rules, Applicant has 20 days to Answer Protestant's Motion. 52 Pa. Code §5.61. Three days must be added since the Interrogatories were served by first class mail. 52 Pa. Code §1.56. This time period, including the allowance for service by first class mail, expired on or about January 4, 2001. As of the date of this Order, the ALJ has not received a copy of a response to the Motion, and the Commission's computerized records do not show that a response has been received.

On January 5, 2001, the ALJ served Prehearing Order No. 2 granting the motion to compel, and discussing the sanctions available under Commission rules for failure to respond to discovery. Liberty was directed to formally or informally respond to the interrogatories and document requests propounded on it by Joint Protestants no later than 10 days after the date of Prehearing Order No. 2, or be subject to the sanctions provided in the Commission's regulations.

On January 17, 2001, Joint Protestants filed a Motion to Dismiss the Application (January 17 Motion) reciting the history of their attempts to discover information from Liberty, referring to the ALJ's Prehearing Order No. 2, and asserting that Liberty still had not provided answers to discovery questions.

The Office of Administrative Law Judge issued a notice canceling the hearing scheduled for February 1, 2001.

On January 19, 2001, Protestant Walsh Cab Co., Inc., filed a Motion joining in the Motion to Dismiss.

Under the Commission's rules, Applicant had until January 30, 2001 to respond to the January 17 Motion. The ALJ has not received a response to the January 17 Motion, nor has she ever received any response to the original Motion to Compel, nor to her Prehearing Order No. 2. The Commission's computerized records (CMS) do not show that any response was filed to either Motion.

Accordingly, this Initial Decision has been prepared to grant the Motions to Dismiss.

## **Discussion**

I am reluctant to allow procedural maneuvers to prevent Applicants from presenting their cases to the Commission about their proposed service. On the other hand, Applicants have a duty to participate in the preliminary stages of the proceedings on their Applications, and here, Liberty, the Applicant, has not done so. Applicant has not responded to discovery requests made on it as required by the Commission's regulations at 52 Pa. Code §§5.341 and 5.342, nor has it responded to the Motion to Compel. Moreover, Applicant has not responded to either of the Motions to Dismiss filed against it.

In her Prehearing Order 2, the ALJ stated that sanctions for failure to respond to discovery included dismissal of an application. Therefore, Applicant was on notice that sanctions could be applied for failure to respond to interrogatories, and that these sanctions include dismissal of its application without a hearing. 52 Pa. Code §5.372 (3). Applicant did not respond to the Order or any of the Motions. The ALJ also recited the Commission's rules providing for response to Joint Protestants' Motion.

Applicant has had sufficient notice and opportunity to respond to the interrogatories, Motion to Compel and Motions to Dismiss, but has failed to do so.


Therefore, the Motions to Dismiss will be granted, and the Application will be dismissed.

**ORDER**

THEREFORE  
IT IS ORDERED:

1. The Motion to Dismiss the Application filed by Joint Protestants Suburban Transit Network, Inc. t/d/b/a TransNet and Willow Grove Yellow Cab Co., Inc. t/d/b/a Bux-Mont Transportation Services Co., and also the Motion Joining the Motion to Dismiss filed by Protestant Walsh Cab Co., Inc., are hereby granted.

2. The Application of Liberty Ambulance Response, Inc. for the right to begin to transport, as a common carrier, by motor vehicle, persons, in paratransit service, between points in the counties of Delaware, Montgomery and Philadelphia, limited to the transportation of persons who require assistance for personal mobility to or from the vehicle, is hereby dismissed for lack of prosecution, and the case shall be marked closed.

  
Allison K. Turner,  
Administrative Law Judge

Dated: January 31, 2001

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Act 294  
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SECRETARY'S BUREAU

Case Identification:

A-00117214; Application of  
Liberty Ambulance Response,  
Inc.

DOCKETED  
MAR 09 2001

Initial Decision By:

ALJ Allison K. Turner

Deadline for Return to OSA:

March 5, 2001

This decision has not been reviewed by OSA.

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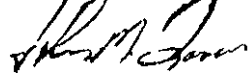
OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

\_\_\_\_\_  
Commissioner

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Date

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\_\_\_\_\_  
Commissioner

3-5-01  
\_\_\_\_\_  
Date

Act 294

Case Identification: A-00117214; Application of Liberty Ambulance Response, Inc.

Initial Decision By: ALJ Allison K. Turner

Deadline for Return to OSA: March 5, 2001

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FEB 27 2001  
CLERK OF SUPERIOR COURT  
PROBATE DEPARTMENT

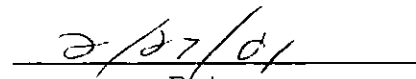
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Act 294

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**MAR 01 2001**

**OFFICE OF SPECIAL ASSISTANTS**

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Commissioner

\_\_\_\_\_  
Date

I do not want full Commission review of this decision.

*Nora Mead Brownell*  
\_\_\_\_\_  
Commissioner

*2-28-01*  
\_\_\_\_\_  
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Act 294

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OFFICE OF SPECIAL ASSISTANTS

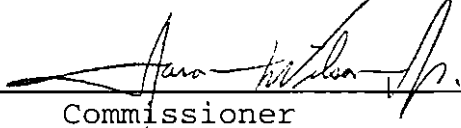
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Commissioner

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Date

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Commissioner

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Act 294

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OFFICE OF SPECIAL ASSISTANTS

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Commissioner

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Date

I do not want full Commission review of this decision.

*Terrance J. Fitzpatrick*

\_\_\_\_\_  
Commissioner

*3/7/01*

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Date

DATE: March 21, 2001

DOCUMENT  
FOLDER

SUBJECT: A-00117214

TO: Office of Administrative Law Judge  
Beth Plantz

FROM: James J. McNulty  
Secretary  
nvl

DOCKETED

MAR 22 2001

APPLICATION OF LIBERTY AMBULANCE RESPONSE, INC.

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.