

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Eagle Ride Taxi Cab	:	
Limited Liability Company for the right to	:	
begin to transport, by motor vehicle, persons	:	A-2017-2621976
in call or demand service, in the City of	:	
Lancaster and within an airline distance of 15	:	
statute miles of the limits of said city	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A corporation filed an application to commence call and demand service. Other call and demand carriers protested the application. This decision dismisses the protests and grants the application.

HISTORY OF THE PROCEEDING

On August 21, 2017, Eagle Ride Taxi Cab, LLC (Eagle Ride) filed an application with the Pennsylvania Public Utility Commission (Commission) requesting the right to begin to transport persons in call or demand service in the City of Lancaster and within an airline distance of 15 statute miles of the limits of said city. The Commission caused notice of Eagle Ride's application to be published in the Pennsylvania Bulletin dated September 30, 2017, at 47 Pa.B. 6155. The notice stated that the deadline for filing protests was October 16, 2017.

On October 12, 2017, EZ Taxi, LLC (EZ), Express Taxi, LLC (Express), Reading City Cab, LLC (Reading) and Amigo Cab, LLC (Amigo) filed a joint protest to Eagle Ride's application. I will refer to EZ, Express, Reading and Amigo collectively as the Joint Protestants. The Joint Protestants' joint protest alleged that the Joint Protestants provide call and demand service in portions of the territory where Eagle Ride seeks authority to operate.

The joint protest alleged that Eagle Ride's application would not serve a useful public purpose responsive to a public demand or need, but would duplicate already existing service to the detriment of existing carriers. The joint protest also alleged that approval of Eagle Ride's application would impair the Joint Protestants' operations to such an extent that it would be contrary to the public interest. Finally, the joint protest alleged that, since Eagle Ride failed to attach any financial information or other information to its application, it failed to show that it is either technically or financially capable of providing the service its application proposes. The joint protest requested that the Commission deny Eagle Ride's application.

On October 10, 2017, Autocab, Inc. (Autocab) filed a protest to Eagle Ride's application. Autocab's protest alleged that it provides call and demand service in portions of the territory where Eagle Ride seeks authority to operate.

Autocab's protest alleged that approval of Eagle Ride's application would impair Autocab's operations to such an extent that it would be contrary to the public interest. Autocab's protest alleged that Eagle Ride is neither technically nor financially capable of providing the service its application proposes. Autocab's protest requested that the Commission deny Eagle Ride's application.

On October 31, 2017, Eagle Ride filed a motion to dismiss Autocab's and the Joint Protestants' protests. Eagle Ride's motion to dismiss stated that Autocab and the Joint Protestants filed their protests to prevent competition. The motion to dismiss pointed out that the protests contain no specific averments concerning Eagle Ride's alleged lack of financial and technical fitness to provide the proposed service.

Eagle Ride argued that the Commission has stated a policy that it will increase competition in the transportation industry by eliminating barriers to entry. In support of this argument, Eagle Ride pointed out that the Commission has revised its regulations to eliminate the requirement that applicants demonstrate need for their proposed service. Based on the Commission's revision of its regulations, Eagle Ride contended that Autocab's and the Joint Protestants' protests were anti-competitive and should be dismissed. The motion to dismiss requested that the Commission dismiss Autocab's and the Joint Protestants' protests.

Also, on October 31, 2017, Eagle Ride filed a verified statement. The verified statement provided information concerning Eagle Ride's proposed service, including its business experience, the facilities it will use, its proposed hiring practices and its proposed vehicle maintenance plan.

On November 6, 2017, the Joint Protestants filed a joint response to Eagle Ride's motion to dismiss. The Joint Protestants' joint response stated that Eagle Ride's application contained no specific information demonstrating its financial or technical fitness. The Joint Protestants pointed out that, at the time they filed their joint protest, Eagle Ride had not filed a verified statement to demonstrate financial or technical fitness. The Joint Protestants contended that their joint protest was proper because Eagle Ride's application failed to provide any information related to Eagle Ride's financial and technical fitness. The joint response requested that the Commission deny Eagle Ride's motion to dismiss.

On November 20, 2017, Autocab, pursuant to 52 Pa.Code § 5.94, filed a withdrawal of its protest. The withdrawal stated that Autocab no longer wished to pursue its protest of Eagle Ride's application.

By notice dated December 5, 2017, the Commission scheduled an initial hearing for this matter on February 6, 2018, at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building in Harrisburg.

By order dated December 13, 2017, I denied Eagle Ride's motion to dismiss the Joint Protestants' joint protest.

On January 17, 2018, Eagle Ride filed a motion to compel, pursuant to 52 Pa.Code §§ 5.103 and 5.342(g). The Joint Protestants did not file an answer to the motion. By order dated January 24, 2018, I granted Eagle Ride's motion and directed the Joint Protestants to respond to Eagle Ride's discovery requests within three days of the date of the order.

I conducted the hearing as scheduled on February 6, 2018. Karen O. Moury, Esquire, appeared on behalf of Eagle Ride which presented one witness and seven exhibits that I admitted into the record. Anthony J. DelGrosso, Esquire, appeared on behalf of the Joint Protestants. At the conclusion of the hearing, the parties requested the opportunity to file briefs and agreed to a briefing schedule. N.T. 60-64.

I issued an order dated February 6, 2018, directing that the parties file and serve main briefs on or before March 9, 2018 and file and serve reply briefs on or before March 16, 2018.

On March 9, 2018, the parties filed their main briefs (M.B.). On March 16, 2018, Eagle Ride filed its reply brief (R.B.).

The initial hearing resulted in a transcript of 65 pages. The record closed on March 16, 2018, the date that Eagle Ride filed its reply brief. For the reasons set forth below, I will grant Eagle Ride's application.

FINDINGS OF FACT

1. On August 21, 2017, Eagle Ride filed an application requesting the right to begin to transport persons in call or demand service in the City of Lancaster and within an airline distance of 15 statute miles of the limits of said city.

2. The Commission caused notice of Eagle Ride's application to be published in the Pennsylvania Bulletin dated September 30, 2017, at 47 Pa.B. 6155.
3. The notice stated that the deadline for filing protests was October 16, 2017.
4. On October 12, 2017, EZ, Express, Reading and Amigo filed a joint protest to Eagle Ride's application.
5. Eagle Ride was formed as a corporation on June 15, 2017. N.T. 9.
6. David Tenhwa is the president and sole shareholder of Eagle Ride. N.T. 10.
7. Eagle Ride plans initially to operate the proposed service out of the facility at 439 North Duke Street, Lancaster. N.T. 13, Applicant Ex. 2.
8. The facility at 439 North Duke Street is owned by Mr. Tenhwa. N.T. 12.
9. Mr. Tenhwa currently operates his accounting and consulting business at 439 North Duke Street. N.T. 12-13.
10. The facility at 439 North Duke Street has telephone land lines, fax, internet, security cameras and six parking spaces. N.T. 13, Applicant Ex. 2.
11. All necessary office furniture and machines are in place, including computers, printer, filing cabinets, coffee machine, refrigerator, microwave and customer waiting area. N.T. 13, Applicant Ex. 2.
12. Eagle Ride will answer telephone, email and social media requests for service. N.T. 13, Applicant Ex. 2.

13. The request for service will be sent to Eagle Ride's drivers via mobile phones, text messages, applications, radio communications and Eagle Ride's web site. N.T. 16, Applicant's Ex. 2.

14. Eagle Ride will install a What's Up app which transmits messages with Google maps of a location to everyone in the network. N.T. 16, Applicant's Ex. 2.

15. Each driver will have a mobile phone that will receive the computer dispatches. N.T. 16, Applicant's Ex. 2.

16. Eagle Ride's vehicles will be stored at the facilities at 439 North Duke Street. N.T. 16.

17. Eagle Ride has acquired one vehicle to provide the proposed service. N.T. 21-22, Applicant's Ex. 3.

18. The vehicle costs approximately \$40,000.00. N.T. 22-23, Applicant's Ex.3.

19. Eagle Ride will store its records at 439 North Duke Street. N.T. 13-15, Applicant's Ex. 2.

20. Eagle Ride's records will be kept physically in the office in filing cabinets and electronically on the cloud. N.T. 15, Applicant's Ex. 2.

21. All records will be maintained as long as is required by Commission regulations. N.T. 15.

22. Eagle Ride's projected income statement shows \$43,200.00 in revenue and \$44,628.00 in expenses for the first year of Eagle Ride's operation. Applicant Ex. 7.

23. The projected income statement shows \$51,840.00 in revenue and \$31,428.00 in expenses for the second year of Eagle Ride's operation. Applicant Ex. 7.
24. The projected balance sheet shows assets of \$188,500.00 and liabilities of \$114,000.00. Applicant Ex. 6.
25. Eagle Ride plans to employ two dispatchers. N.T. 17, Applicant's Ex. 2.
26. The dispatchers would initially be employees of Mr. Tenhwa's other business and he would pay them extra wages to dispatch. N.T. 17.
27. Eagle Ride will hire one driver and Mr. Tenhwa would drive as well. N.T. 18, Applicant's Ex. 2.
28. Drivers would have to be at least 21 years old and have five years of driving experience. N.T. 18, Applicant's Ex. 2.
29. Drivers will lease the vehicles at the rate of \$75.00 for an eight-hour shift. N.T. 61.
30. Mr. Tenhwa operated a taxi cab company for six years in Kampala, Uganda from 1994 to 2000. N.T. 10-11, Applicant's Ex. 2.
31. During that time, Mr. Tenhwa's taxi cab company was subject to regulation by the City of Kampala. N.T. 11.
32. Eagle Ride obtained a commercial insurance quote. N.T. 24-25, Applicant's Ex. 4.
33. The quote is for coverage of the vehicle that Eagle Ride has purchased. N.T. 24-25, Applicant's Ex. 4.

34. The premium for the vehicle is approximately \$7,000.00 per year. N.T. 24-25, Applicant's Ex. 4.

35. Eagle Ride will require criminal background checks of all its drivers before hiring them. N.T. 18-19, Applicant Ex. 2.

36. Eagle Ride will periodically review updated criminal background checks on all its drivers. N.T. 18-19, Applicant's Ex. 2.

37. Eagle Ride will also periodically review driving records to ensure that its drivers are properly licensed. N.T. 18-19.

38. Eagle Ride will have a zero-tolerance alcohol and drug policy. N.T. 20-21, Applicant's Ex. 2.

39. Eagle Ride plans to have a drug free work place and will not hire or retain drivers who use drugs. N.T. 20-21, Applicant's Ex. 2.

40. Drivers with no previous taxi driving experience will undergo two to four days of training concerning safety, map reading, passenger safety, vehicle safety, vehicle maintenance and customer service. N.T. 19, Applicant's Ex. 2.

41. Eagle Ride's vehicles will be maintained by certified mechanics. N.T. 23-24, Applicant's Ex. 2.

42. Eagle Ride will require that each vehicle be periodically inspected to ensure that seat belts and mirrors are in good condition and working. N.T. 23-24, Applicant's Ex. 2.

43. Tire pressure, oil and brake fluids will be kept at correct levels. N.T. 23-24, Applicant's Ex. 2.

44. All lights will be kept in full working order. N.T. 23-24, Applicant's Ex. 2.

45. Eagle Ride's vehicles will be subject to annual state inspections. N.T. 23-24, Applicant's Ex. 2.

46. Eagle Ride will replace vehicles when they become older than permitted by Commission regulations. N.T. 24, Applicant's Ex. 2.

47. Eagle Ride will maintain its vehicle records in compliance with Commission rules and regulations. Applicant's Ex. 2.

48. Mr. Tenhwa entered a guilty plea on November 12, 2004 to patronizing prostitutes, in violation of 18 Pa.C.S. § 5902(e). N.T. 12, Applicant's Ex. 2.

DISCUSSION

As the applicant, Eagle Ride has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). It must establish its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet its burden of proof, Eagle Ride must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). In this case, Eagle Ride requests that the Commission, pursuant to 66 Pa.C.S. § 1102, approve its application to transport persons in call and demand service in the City of Lancaster and within fifteen miles of the City of Lancaster.

The statute at 66 Pa.C.S. § 1103 sets forth the standard that governs whether the Commission should approve Eagle Ride's application and issue an order granting its request for a certificate of public convenience:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

Previously, an applicant for authority to transport persons had to demonstrate a public need or demand for the proposed service and its fitness to provide the service. Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n, 502 A.2d 762 (Pa.Cmwlt. 1985); Re: Pennsylvania-American Water Co., 85 Pa. PUC 548 (1995).

The criteria the Commission uses in determining whether to approve a motor carrier application is set forth in the policy statement codified at 52 Pa.Code § 41.14:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications—statement of policy.

An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

- (1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.
- (2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.
- (3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.
- (4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (Relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

This language governing the evidentiary criteria used to decide motor carrier applications represents a recent change in the policy statement. The Commission in Policy Statement Revision of 52 Pa.Code § 41.14, Docket No. M-2017-2629722 (Final Policy Statement entered December 7, 2017) (Policy Statement Revision), eliminated the requirement that an applicant demonstrate public demand or need for its proposed service. The Policy Statement Revision also eliminated the provision stating that the Commission could withhold approval of an application if entry of a new carrier would endanger or impair existing carriers. The Commission caused the Policy Statement Revision to be published in the Pennsylvania Bulletin at 48 Pa.B. 882 (February 10, 2018). The Policy Statement Revision became effective on the publication date of February 10, 2018.

In the previous modification of this policy statement in 2004 in the Pennsylvania Bulletin at 34 Pa. B. 3912, the Commission stated that it was appropriate for it to place greater emphasis on the factors to be considered in evaluating an applicant's fitness under 52 Pa.Code § 41.14. In order to provide guidance to the industry and Commission staff, the Commission stated that it would consider the factors now set forth in 52 Pa.Code § 41.14(1)-(6) with regard to the fitness of limousine applicants.

The Commission noted in the previous modification of the policy statement that these listed factors did not represent a hard and fast set of rules that must be considered in every application but rather were factors the Commission would ordinarily examine in determining fitness, pursuant to 52 Pa Code § 41.14. The Commission also stated that since these guidelines were general in nature, they were relevant to the issue of fitness for all motor carriers and would be used as guidelines for evaluating motor carrier applications generally.

The Policy Statement Revision became effective on February 10, 2018, four days after I conducted the hearing in this matter but before the parties filed their briefs. I will apply the new version of 52 Pa.Code § 41.14 set forth in the Policy Statement Revision to this proceeding because, at the time Eagle Ride filed its application, the Commission had narrowed the grounds for filing protests to applications and eliminated the requirement that an applicant demonstrate public need or demand for the proposed service. The Commission's regulation governing protests to passenger common carrier applications at 52 Pa.Code § 3.381(c)(1)(i)(A)(VI) provides as follows:

(VI) A protest is limited to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.

This language governing the scope of protests represented a recent change in the regulation. The Commission in Reduce Barriers to Entry for Passenger Motor Carriers, 47 Pa.B. 3099 (June 3, 2017) (Regulation Order), adopted a final rulemaking order designed to reduce barriers to entry for passenger carriers by eliminating the requirement that an applicant establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.

In adopting the Regulation Order, the Commission emphasized that it was not deregulating the passenger carrier industry. The Commission stated that it would still require applicants to establish financial and technical fitness to serve the requested market. In addition, it would still require that vehicles and drivers comply with all regulatory safeguards. Since Eagle Ride filed its application after the date of the Regulation Order, its application is governed by the Regulation Order and Eagle Ride is not required to demonstrate need. Applying the Policy Statement Revision is consistent with the law governing Eagle Ride's application at the time it was filed.

I will also apply the portion of the Policy Statement Revision concerning the removal of the impairment element. This will have no effect on the outcome of this case since the Joint Protestants presented no evidence and have not alleged in their briefs that the entry of Eagle

Ride into the field will endanger or impair their operations to such an extent that the granting of authority would be contrary to the public interest.

Finally, applying the Policy Statement Revision to this proceeding is consistent with past Commission decisions. In Rudacille v. Columbia Gas of Pennsylvania, Inc., Docket No. C-20043504 (Opinion and Order entered August 9, 2005) (Rudacille), the Commission applied the recently enacted Chapter 14 to a complaint filed prior to the enactment of Chapter 14. In Rudacille, the Commission reasoned that while there is a presumption against the retroactive application of statutes affecting substantive rights, a law is only retroactive in its application when it relates back and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired, citing R & P Services v. Dept. of Revenue, 541 A.2d 432 (Pa.Cmwlth. 1988). The Commission stated that substantive rights are those affected when the application of the statute imposes new legal burdens on past transactions or occurrences. DeMatteis v. DeMatteis, 582 A.2d 666 (Pa. Super. 1990); Dept. of Labor and Industry, Bureau of Employment Security v. Pa. Engineering Corp., 421 A.2d 521 (Pa. Cmwlth. 1980). However, where no substantive right or contractual obligation is involved, an act is not retroactively construed when applied to a condition existing on its effective date even though the condition results from events which occurred prior to that date. Creighan v. Pittsburgh, 389 Pa. 569, 132 A.2d 867 (1957); Cole v. Czegan, 722 A.2d 686, 1998 Pa. Super. LEXIS 2861 (Pa. Super. 1998) (citing McMahon v. McMahon, 417 Pa. Super. 592, 612 A.2d 1360, 1364 (1992)); Brangs v. Brangs, 407 Pa. Super. 43, 595 A.2d 115 (1991).

The Commission then explained that applying Chapter 14 to current cases did not interfere with any contractual obligation or vested right of customers and did not constitute a retroactive application of the new law. The Commission stated that the practical effect of Chapter 14 may alter the availability of certain types of remedies, such as payment arrangements, going forward by limiting the authority of the Commission to make such awards. The Commission noted that in Bible v. Commonwealth, 548 Pa. 247, 696 A.2d 1149 (1997), the Pennsylvania Supreme Court upheld an amendment to the Workers' Compensation Act that merely changed the plaintiff's remedy.

Concerning payment arrangements, the Commission explained that it has held that a payment arrangement, which prevents service termination so long as it is complied with, is not a right but a privilege. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered March 17, 2004). The Commission then ruled that applying Chapter 14 to the Rudacille case did not impair any contractual obligations or disturb any vested rights of the complainant. The only thing that changed was the remedy available to the complainant by limiting the number of allowed payment arrangements. The Commission concluded that Chapter 14 should be applied to the Rudacille case.

While an administrative agency is not bound by the rule of stare decisis, it must render consistent opinions and should either follow, distinguish or overrule its own precedent. Bell Atl. Tel. Co. v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa.Cmwlt. 1995); Pennsylvania Trout v. Pa. Dep't of Env'tl. Prot., 863 A.2d 93, (Pa.Cmwlt. 2004); Crawford v. National Fuel Gas Distribution Co., Docket No. C-20066348 Opinion and Order entered December 6, 2007). To be consistent with the prior Commission decision in Rudacille, I will apply the Policy Statement Revision to this proceeding.

I conclude that applying the Policy Statement Revision to this proceeding is consistent with Rudacille because here, as in Rudacille, imposing the Policy Statement Revision does not impose new legal burdens on any past transaction of Eagle Ride. There is no substantive right or contractual obligation involved in this proceeding. The Policy Statement Revision is not being retroactively construed in this proceeding but is being applied to a condition existing on its effective date where the condition results from events which occurred prior to that date.

This case is distinguishable from the Commission's decision in Application of Keystone Transportation, LLC, Docket No. A-2016-2538182 (Opinion and Order entered February 9, 2018) where the Commission declined to apply the Regulation Order eliminating the requirement to demonstrate public demand or need for the proposed service to an application filed prior to the entry of the Regulation Order. The Commission determined that it would apply the prior regulation requiring need since that regulation was in effect from the time of the filing of the application through the filing of exceptions. The Commission stated that this approach

was consistent with the legal presumption against retroactive application of statutes and regulations.

Here, the Policy Statement Revision became effective after the hearing but before briefs were filed and before an initial decision was filed. This difference, and my analysis set forth above, concerning application of the Policy Statement Revision to this proceeding, dictates a different result.

Therefore, Eagle Ride should address the guidelines set forth in 52 Pa.Code §§ 41.14 (1)-(6) so that the Commission can determine whether it is financially and technically fit to provide its proposed service. It should also state how it will address the Commission's vehicle and driver requirements.

I. Fitness of Eagle Ride to provide the proposed service.

I will first determine whether Eagle Ride possesses the technical and financial ability to provide the proposed service, pursuant to 52 Pa.Code § 41.14. In evaluating whether Eagle Ride can satisfy the fitness standards set forth in 52 Pa.Code § 41.14, the Commission will examine: 1) whether it has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested; 2) whether Eagle Ride and its employees have sufficient technical expertise and experience to serve the territory requested; 3) whether Eagle Ride has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public; 4) whether it has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards; 5) Eagle Ride's record, if any, of compliance with the Public Utility Code, Commission regulations and the Commission's orders; and 6) whether Eagle Ride or its drivers have been convicted of a felony or crime of moral turpitude and remain subject to supervision by a court or correctional institution.

I will first review the evidence presented regarding the facilities and equipment that Eagle Ride proposes to operate for the proposed service.

David Tenhwa testified that Eagle Ride was formed as a corporation on June 15, 2017. N.T. 9. David Tenhwa is the president and sole shareholder of Eagle Ride. N.T. 10.

He testified that Eagle Ride plans initially to operate the proposed service out of the facility at 439 North Duke Street, Lancaster. N.T. 13, Applicant Ex. 2. The facility at 439 North Duke Street is owned by Mr. Tenhwa. N.T. 12. Mr. Tenhwa currently operates his accounting and consulting business at 439 North Duke Street. N.T. 12-13.

The facility at 439 North Duke Street has telephone land lines, fax, internet, security cameras and six parking spaces. N.T. 13, Applicant Ex. 2. All necessary office furniture and machines are in place, including computers, printer, filing cabinets, coffee machine, refrigerator, microwave and customer waiting area. N.T. 13, Applicant Ex. 2.

Mr. Tenhwa testified that Eagle Ride would answer telephone, email and social media requests for service. N.T. 13, Applicant Ex. 2. The request for service will be sent to Eagle Ride's drivers via mobile phones, text messages, applications, radio communications and Eagle Ride's web site. N.T. 16, Applicant's Ex. 2. Eagle Ride will install a What's Up app which transmits messages with Google maps of a location to everyone in the network. N.T. 16, Applicant's Ex. 2. Each driver will have a mobile phone that will receive the computer dispatches. N.T. 16, Applicant's Ex. 2.

Mr. Tenhwa testified that he planned to house Eagle Ride's vehicles at the facilities at 439 North Duke Street. N.T. 16. Eagle Ride has acquired one vehicle to provide the proposed service. N.T. 21-22, Applicant's Ex. 3. The vehicle cost approximately \$40,000.00. N.T. 22-23, Applicant's Ex.3.

Eagle Ride will also store its records at 439 North Duke Street. N.T. 13-15, Applicant's Ex. 2. These records will be kept physically in the office in filing cabinets and electronically on the cloud. N.T. 15, Applicant's Ex. 2. All records will be maintained as required by Commission regulations. N.T. 15.

The Joint Protestants have not presented any evidence to rebut Eagle Ride's evidence concerning facilities and equipment. In addition, the Joint Protestants have not presented any arguments in their briefs that Eagle Ride has failed to establish that it has sufficient facilities and equipment to provide the proposed service.

Based on the evidence, I conclude that Eagle Ride's proposed facilities and equipment are sufficient for the proposed service in the territory requested. I recognize that since Eagle Ride's business will operate out of Mr. Tenhwa's facilities, there may be some limitations in terms of Eagle Ride's size. Eagle Ride will be a new business, so it is reasonable to expect that the facilities it initially uses may be less than ideal. However, given the small size of the proposed service territory, there will be adequate facilities to communicate with drivers, receive calls from customers and retain the records required by Commission regulations. Mr. Tenhwa indicated that the facilities Eagle Ride will use at 439 North Duke Street are temporary to establish the business and that as the business grows, he may move the business.

Similarly, since Eagle Ride will be a new business and the service territory is limited, the number of vehicles providing the service is adequate. As the business grows, it will be necessary to purchase additional equipment to meet increased demand. Mr. Tenhwa testified that he understood that the vehicles will have to comply with the Commission's equipment requirements at 52 Pa. Code § 29.314 before he can place them in service. N.T. 23.

I will next review the evidence presented regarding the financial resources that Eagle Ride proposes to utilize to operate its proposed service. Eagle Ride provided a projected income statement for its first two years of operation and a projected balance sheet. Applicant's Exs. 6 and 7. The projected income statement shows \$43,200.00 in revenue and \$44,628.00 in expenses for the first year of Eagle Ride's operation. Applicant Ex. 7. The projected income statement shows \$51,840.00 in revenue and \$31,428.00 in expenses for the second year of Eagle Ride's operation. Applicant Ex. 7. The projected balance sheet shows assets of \$188,500.00 and liabilities of \$114,000.00. Applicant Ex. 6.

The Joint Protestants argue that Eagle Ride has failed to demonstrate that it has sufficient capital necessary to provide its proposed service. Joint Protestants' M.B. 4-6. The Joint Protestants point out that Eagle Ride intends to operate its proposed service from a facility which Mr. Tenhwa currently uses for his accounting business and will use employees of Mr. Tenhwa's accounting business to help operate the proposed service. Joint Protestants' M.B. 4. The Joint Protestants argue that Eagle Ride should have produced evidence demonstrating the financial fitness of Mr. Tenhwa's accounting business to show that it can support Eagle Ride's proposed service. Joint Protestants' M.B. 4-5.

Furthermore, the Joint Protestants argue that Eagle Ride's proposed balance sheet does not include the assets and liabilities of Mr. Tenhwa's other businesses upon which Eagle Ride will rely. Joint Protestants' M.B. 4-5. The Joint Protestants contend that Eagle Ride has selectively put forth financial evidence demonstrating the assets of Mr. Tenhwa, while excluding evidence of liabilities that relate to his other businesses. Joint Protestants' M.B. 5. The Joint Protestants conclude that because Eagle Ride has testified about how its proposed service will rely on the support of Mr. Tenhwa's other ventures, Eagle Ride cannot meet its burden of proof without providing evidence of the financial fitness of Mr. Tenhwa's other businesses. Joint Protestants' M.B. 5.

Finally, the Joint Protestants challenge Eagle Ride's \$600 projected monthly wages expense. Joint Protestants' M.B. 5. Mr. Tenhwa testified that the basis for this number was that he would pay employees of his existing businesses an additional \$2.50 per hour over their current hourly rate to compensate them for the work they would do for Eagle Ride. Joint Protestants' M.B. 5. The Joint Protestants argue that the \$600 projected monthly wage expense understates the expense by approximately \$310 per month if one multiplies the number of hours that Eagle Ride plans to operate by \$2.50 per hour. Joint Protestants' M.B. 5. The Joint Protestants point out that this is a substantial amount considering that Eagle Ride projects a loss in its first year of operation. Joint Protestants' M.B. 5. The Joint Protestants assert that, based on the above arguments, Eagle Ride has not demonstrated that it possesses the financial fitness to operate its proposed service.

In its reply brief, Eagle Ride contends that it has presented sufficient evidence that it has adequate financial resources to provide its proposed service. Eagle Ride R.B. 3-8. Eagle Ride points out that the Joint Protestants have not cited any Commission regulations, policy statements or decisions that set forth any requirement that impose minimal capital requirements on applicants for call and demand service. Eagle Ride R.B. 4. I agree that there are no such Commission regulations, policy statements or decisions.

Since there are no Commission regulations, policy statements or decisions that place minimum capital requirements on Eagle Ride, prior Commission decisions state that an applicant such as Eagle Ride must only demonstrate that it has sufficient financial resources to provide the proposed service. Re: Perry Hassman, 55 Pa. PUC 661 (1982). As set forth above, Eagle Ride has demonstrated that it has sufficient financial resources.

Eagle Ride points out that the Joint Protestants have not cited any Commission regulations, policy statements or decisions that prohibit Eagle Ride from relying on the personal financial assets of its lone member to support its start-up operations. Eagle Ride R.B. 4-5. Eagle Ride also argues that the Joint Protestants have not cited any Commission regulations, policy statements or decisions to support their argument that Eagle Ride should have produced evidence demonstrating the financial fitness of Mr. Tenhwa's accounting business to show that it can support Eagle Ride's proposed service. Eagle Ride R.B. 5. I agree that there are no such Commission regulations, policy statements or decisions.

Since there are no Commission regulations, policy statements or decisions that require Eagle Ride to provide financial information on Mr. Tenhwa's other businesses, any financial information concerning Mr. Tenhwa's other businesses is irrelevant because those other businesses are not the applicant. Eagle Ride and Mr. Tenhwa's other businesses are separate corporations. The fact that the shareholder of all these businesses is Mr. Tenhwa does not change this. Corporations are considered separate entities even if their stock is owned by one person. Keystone Cab Serv. v. Pa. Pub. Util. Comm'n, 170 A.3d 1287 (Pa.Cmwlt. 2017); Yellow Cab of Pittsburgh v. Pa. Pub. Util. Comm'n, 673 A. 2d 1015 (Pa.Cmwlt. 1996).

The Joint Protestants did not present any evidence that Eagle Ride was created to disguise or perpetrate a fraud. There is no justification for disregarding Eagle Ride as an entity separate from Mr. Tenhwa's other businesses. Financial information concerning Mr. Tenhwa's other businesses is therefore irrelevant to this application. Rosemont Taxicab Co. v. Philadelphia Parking Authority, 68 A.3d 29 (Pa.Cmwlth. 2013).

Concerning the Joint Protestants challenge to Eagle Ride's \$600 projected monthly wages expense, Eagle Ride in its reply brief points out that Mr. Tenhwa testified that Eagle Ride would pay affected employees \$2.50 per hour more to "cover the extra work they do for Eagle". Eagle Ride R.B. 7. Mr. Tenhwa made it clear that the \$600 monthly expense he estimated on Applicant Exhibit No. 7 for dispatchers would be the incremental costs over his current costs to pay the employees who work for the accounting business. Eagle Ride R.B. 7. Therefore, Eagle Ride concludes, Mr. Tenhwa does not plan to pay two employees \$2.50 per hour more than their base wages over the course of an eight-hour shift, as the Joint Protestants' calculations assume. Eagle Ride R.B. 7. Rather, Mr. Tenhwa explained that he would assign his existing employees more hours to cover the period of operation for the taxicab service. Eagle Ride R.B. 7. He also noted that he would handle dispatching duties himself as necessary. Eagle Ride R.B. 7. Finally, Mr. Tenhwa pointed to a miscellaneous entry on Applicant Exhibit No. 7 in the amount of \$3,400 per year that is available to cover any unexpected costs. Eagle Ride R.B. 7.

I agree with Eagle Ride that the Joint Protestants challenge to Eagle Ride's \$600 projected monthly wages expense does not lead to the conclusion that Eagle Ride has failed to demonstrate that it possesses the financial fitness to operate its proposed service. Mr. Tenhwa testified that the projected income statement shows an expense of \$300 per month for miscellaneous expenses. N.T. 59-60, Applicant Ex. 7. This amount would be available to pay unexpected expenses. N.T. 59. In addition, Mr. Tenhwa stated that his personal assets would be available to finance Eagle Ride. N.T. 60. Given these factors, I cannot conclude that Eagle Ride has failed to demonstrate that it has sufficient capital resources to serve the proposed territory.

Based on the evidence, I conclude that Eagle Ride has sufficient capital resources to serve the proposed territory. I am not aware that the Commission imposes any minimal capital requirements on applicants for call and demand service. In the absence of any minimal capital requirements, the applicant's capital resources must only be adequate to serve the territory requested. Given the limited size of the territory requested and the limited size of Eagle Ride's proposed business, I conclude that Eagle Ride has adequate financial resources to commence service.

I will next review the evidence presented regarding the employees that Eagle Ride proposes to employ and any experience or technical expertise they may have. Mr. Tenhwa testified that Eagle Ride planned to employ two dispatchers. N.T. 17, Applicant's Ex. 2. These dispatchers would initially be employees of his other business and he would pay them extra wages to dispatch. N.T. 17.

Mr. Tenhwa would hire one driver and he would drive as well. N.T. 18, Applicant's Ex. 2. The drivers would have to be at least 21 years old and have five years of driving experience. N.T. 18, Applicant's Ex. 2. Drivers will lease the vehicles at the rate of \$75.00 for an eight-hour shift. N.T. 61.

Mr. Tenhwa testified that he operated a taxi cab company for six years in Kampala, Uganda from 1994 to 2000. N.T. 10-11, Applicant's Ex. 2. During that time, the taxi cab company was subject to regulation by the City of Kampala. N.T. 11.

The Joint Protestants have not presented any evidence to rebut Eagle Ride's evidence concerning employees that Eagle Ride plans to hire.

Based on the evidence, I conclude that Mr. Tenhwa has the experience to serve the territory requested. He has six years of experience operating a taxi cab company in Uganda, so he is familiar with the operations of call and demand carriers. This experience gives him the technical expertise that will enable him to operate Eagle Ride. Given the limited size of the

territory requested, Mr. Tenhwa has adequate experience and expertise to serve the territory requested.

I will next review the evidence regarding Eagle Ride's ability to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public. Eagle Ride provided a copy of a commercial insurance quote it obtained. N.T. 24-25, Applicant's Ex. 4. The quote states that the insurance is for coverage of the vehicle that Eagle Ride has purchased. N.T. 24-25, Applicant's Ex. 4. The premium for the vehicle is approximately \$7,000.00 per year. N.T. 24-25, Applicant's Ex. 4.

Based on the evidence, I conclude that Eagle Ride is able to secure sufficient and continuous insurance coverage for the vehicles to be used in the provision of service to the public. The Joint Protestants presented no evidence that the insurance quote offered into evidence is inadequate to meet the Commission's insurance requirements for passenger carriers found at 52 Pa.Code § 32.11. In addition, the policy statement at 52 Pa.Code § 41.14 only requires that an applicant has or is able to secure sufficient and continuous insurance coverage.

If the Commission approves Eagle Ride's application, it will direct it to submit a certificate of insurance coverage. The Commission can reject the certificate, pursuant to 52 Pa. Code § 32.2(g), if it determines that the certificate does not comply with the Commission's regulations.

I will next review Eagle Ride's evidence regarding its plan to comply with the Commission's driver and vehicle safety regulations and service standards. Eagle Ride will require criminal background checks of all its drivers before hiring them. N.T. 18-19, Applicant Ex. 2. Eagle Ride will periodically review updated criminal background checks on all its drivers. N.T. 18-19, Applicant's Ex. 2. Eagle Ride will also periodically review driving records to ensure that its drivers are properly licensed. N.T. 18-19.

Eagle Ride will have a zero-tolerance alcohol and drug policy. N.T. 20-21, Applicant's Ex. 2. Eagle Ride plans to have a drug free work place and will not hire or retain drivers who use drugs. N.T. 20-21, Applicant's Ex. 2.

Drivers with no previous taxi driving experience would undergo two to four days of training concerning safety, map reading, passenger safety, vehicle safety, vehicle maintenance and customer service. N.T. 19, Applicant's Ex. 2.

Eagle Ride's vehicles would be maintained by certified mechanics. N.T. 23-24, Applicant's Ex. 2. Eagle Ride would require that each vehicle be periodically inspected to ensure that seat belts and mirrors are in good condition and working. N.T. 23-24, Applicant's Ex. 2. Tire pressure, oil and brake fluids will be kept at correct levels. N.T. 23-24, Applicant's Ex. 2. All lights will be kept in full working order. N.T. 23-24, Applicant's Ex. 2. In addition, Eagle Ride's vehicles will be subject to annual state inspections. N.T. 23-24, Applicant's Ex. 2.

Eagle Ride will replace vehicles when they become older than permitted by Commission regulations. N.T. 24, Applicant's Ex. 2.

Eagle Ride will maintain its vehicle records in compliance with Commission rules and regulations. Applicant's Ex. 2.

The Joint Protestants have not presented any evidence to rebut Eagle Ride's evidence concerning driver and vehicle safety regulations and service standards.

Based on the evidence, I conclude that Eagle Ride has a plan to comply with the Commission's driver and vehicle safety regulations and service standards. Generally, Eagle Ride's plan to comply with the Commission's driver and vehicle regulations meets the requirements set forth at 52 Pa.Code §§ 29.401-29.405 and 52 Pa.Code §§ 29.501-29.507. Based on the evidence presented, I conclude that Eagle Ride has demonstrated by a preponderance of the evidence that it possesses the technical and financial ability to provide its proposed service.

II. Propensity of Eagle Ride to Operate Safely and Legally

Even if an applicant has the technical and financial capability to provide the proposed service, the Commission may withhold authority to operate if it concludes that the applicant lacks the propensity to operate safely and legally. The provisions at 52 Pa.Code §§ 41.14(5) and (6) therefore relate to an applicant's propensity to operate safely and legally, not to its technical or financial capability to provide the proposed service. The policy statement at 52 Pa.Code §§ 41.14(5) and (6) addresses the propensity of the applicant to operate safely and legally by stating that the Commission will consider the applicant's record of compliance with the Public Utility Code, Commission regulations and Commission orders and whether the applicant or its drivers have been convicted of a crime of moral turpitude or a felony and remain under the supervision of a court or correctional institution.

The Commission has addressed an applicant's propensity to operate safely in light of the applicant's record of compliance with the Public Utility Code, Commission regulations and Commission orders pursuant to 52 Pa.Code § 41.14(5). In Application of ATM Corporation of America, t/d/b/a Classic Limousine Transportation (ATM Corporation), Docket No. A-00112166, (Opinion and Order entered September 24, 1996), the Commission indicated that it had in numerous instances found an applicant to be fit even though the applicant had violated the Commission's regulations a number of times. Regarding prior illegal operation, the Commission stated as follows:

It is well settled that in order for the Commission to conclude that an Applicant lacks a propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an Applicant has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission. Application of Central Transport, Inc., Docket No. A-00108155 (Order entered June 26, 1992).

The policy statement at 52 Pa.Code § 41.14(5) for the most part addresses administrative proceedings conducted by the Commission. The Commission's Bureau of

Investigation and Enforcement (I&E) usually initiates these proceedings by a complaint alleging that a common carrier has violated the Public Utility Code, Commission regulations or an order of the Commission. If the Commission determines that the common carrier has committed a violation, it may impose a civil penalty pursuant to 66 Pa.C.S. § 3301. The language in 52 Pa. Code § 41.14(5) also encompasses criminal prosecutions for violations of the Public Utility Code, Commission regulations or an order of the Commission pursuant to 66 Pa.C.S. §§ 3302 and 3310.

The Commission has indicated in the decisions interpreting 52 Pa.Code § 41.14(5) that persistent disregard for the Public Utility Code, Commission regulations or orders of the Commission occurs only after numerous violations. The numerous violations demonstrate that the common carrier has no intent of operating legally or safely. A single violation is not sufficient to demonstrate a persistent disregard for the Public Utility Code, Commission regulations or orders of the Commission.

In this case, the parties did not present any evidence concerning Eagle Ride's record of compliance with the Public Utility Code, Commission regulations and Commission orders. Since the parties did not present any evidence concerning Eagle Ride's record of compliance with the Public Utility Code, Commission regulations and Commission orders, there is no evidence that Eagle Ride has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code. Eagle Ride's record of compliance with the Public Utility Code, Commission regulations and Commission orders do not indicate that it lacks the propensity to operate safely and legally.

Having addressed Eagle Ride's record of compliance with the Public Utility Code, Commission regulations and Commission orders, I will now address whether Eagle Ride or its drivers have been convicted of a felony or crime of moral turpitude and remain subject to supervision by a court or correctional institution, pursuant to 52 Pa.Code § 41.14(6). The reasoning pursuant to 52 Pa.Code § 41.14(5) that an applicant must demonstrate a persistent disregard for the Public Utility Code, Commission regulations or orders of the Commission is not applicable to the provision at 52 Pa.Code § 41.14(6).

The provision at 52 Pa.Code § 41.14(6) is not limited to crimes involving violations of the Public Utility Code, Commission regulations or orders. Rather, the provision at 52 Pa.Code § 41.14(6) encompasses any felony or crime of moral turpitude, regardless of whether it involves violating the Public Utility Code, Commission regulations or orders. Therefore, a conviction of a felony or crime of moral turpitude, pursuant to the provision at 52 Pa.Code § 41.14(6), does not have to demonstrate a persistent disregard for the Public Utility Code, Commission orders or regulations for that conviction to demonstrate that an applicant lacks the propensity to operate safely and legally. A single conviction pursuant to 52 Pa.Code § 41.14(6) may be sufficient to demonstrate that an applicant lacks the propensity to operate safely and legally.

Here, Mr. Tenhwa admitted that he had entered a guilty plea on November 12, 2004 to patronizing prostitutes, in violation of 18 Pa.C.S. § 5902(e). N.T. 12, Applicant's Ex. 2. This is a third-degree misdemeanor.

Since Mr. Tenhwa pled guilty to patronizing prostitutes, the question then becomes whether patronizing prostitutes is a crime of moral turpitude. The provision at 52 Pa. Code § 41.14(6) does not define "crime of moral turpitude".

Under the Pennsylvania Crimes Code, the term "moral turpitude" does not encompass specific classes of crimes and is therefore not limited to describing felonies. The statute at 18 Pa. C.S. § 103 does not define the term "moral turpitude". The term "moral turpitude" has been used in the law for centuries and its definition is the subject of numerous court decisions. Moretti v. State Bd. of Pharmacy, 277 A.2d 516 (Pa.Cmwlth. 1971) (Moretti). In Moretti, the Commonwealth Court defined "moral turpitude" as anything done knowingly contrary to justice, honesty or good morals. Since the Moretti decision, the Commonwealth Court has used this definition in determining whether a crime involves "moral turpitude". Burnworth v. State Bd. of Vehicle Mfs., Dirs. and Salespersons, 589 A.2d 294 (Pa.Cmwlth. 1991); Bowalick v. Dep't of Educ., 840 A.2d 519 (Pa.Cmwlth. 2004). A crime that involves anything done knowingly contrary to justice, honesty or good morals is a crime of moral turpitude, regardless of whether it is a felony.

My research has failed to reveal any Pennsylvania appellate court decisions holding that patronizing prostitutes is a crime of moral turpitude. Assuming that patronizing prostitutes is contrary to good morals and therefore a crime of moral turpitude, the question is whether, pursuant to 52 Pa.Code § 41.14(6), an applicant or driver convicted of a crime of moral turpitude who is not under the supervision of a court or correctional institution should be barred from ever being considered fit to provide common carrier service. The answer to this question is not clear.

The order entered April 2, 2004 at M-00041796 establishing the previous version of the policy statement at 52 Pa.Code § 41.14 does not explain whether the Commission considers such circumstances to act as a bar to an applicant or driver from providing common carrier service. Since the provision states that the Commission may examine whether an applicant or driver has been convicted and remains subject to supervision by a court or correctional institution, it appears logical to conclude that if the applicant or driver has been convicted but is no longer subject to supervision by a court or correctional institution, the Commission should not consider the conviction, pursuant to 52 Pa.Code § 41.14(6).

Conversely, even if a person convicted of a felony or crime of moral turpitude is no longer subject to the supervision of a court or correctional institution, an argument can be made that the Commission may still consider whether the conviction demonstrates that the applicant or driver lacks the propensity to operate safely and legally. The Commission's regulations governing drivers appear to support this view.

The driver regulations at 52 Pa.Code §§ 29.501-29.509 govern drivers of certain passenger common carriers, including call and demand carriers. In particular, the regulation at 52 Pa. Code § 29.505(b) states that call and demand passenger common carriers shall disqualify applicant drivers convicted of certain crimes within specified time periods. The disqualification does not depend on whether the applicant is under court supervision.

Patronizing prostitutes is not among the crimes listed in the above regulation. Therefore, a person convicted of patronizing prostitutes is not disqualified from operating a vehicle in call and demand service. However, the regulation only applies to drivers, not applicants.

These regulations governing drivers of call and demand carriers are inconsistent with the policy statement at 52 Pa.Code § 41.14(6). Because the Commission adopted the most recent version of the driver regulation in 2017, after it modified the policy statement in 2004 and because the policy statement does not constitute a set of hard and fast rules, I will interpret the policy statement at 52 Pa.Code § 41.14(6) as providing that even if a person convicted of a crime of moral turpitude is no longer subject to the supervision of a court or correctional institution, the Commission may still consider whether the conviction demonstrates that the applicant or driver lacks the propensity to operate safely and legally.

Given the lack of clarity and the Commission's comments in the Pennsylvania Bulletin that the listed factors do not represent a hard and fast set of rules, I conclude that 52 Pa. Code § 41.14(6) does not permanently bar an applicant convicted of a crime of moral turpitude from being considered fit to provide call and demand service. The Commission may exercise its discretion in determining whether such a conviction should bar an applicant from providing call and demand service. In exercising its discretion, the Commission should not view this provision in isolation, but in the context of the entire policy statement.

Considering the criminal conviction of Mr. Tenhwa, I must now determine whether the evidence, taken as a whole, demonstrates that Eagle Ride lacks the propensity to operate safely and legally, pursuant to 52 Pa.Code § 41.14(6). I conclude that the evidence regarding the criminal convictions of Mr. Tenhwa, taken as a whole, demonstrates that Eagle Ride has the propensity to operate safely and legally.

I reach this conclusion for several reasons. First, patronizing a prostitute does not involve the threat of physical violence or harm to the person as would a conviction for assault, battery or robbery. The Commission's concern that Mr. Tenhwa may present a physical threat to

customers using Eagle Ride's proposed service should be less than would be the case if his conviction was for crimes involving threat or harm to the person.

Second, patronizing a prostitute does not involve the theft or destruction of the property of another. The Commission's concern that Mr. Tenhwa may steal or destroy the property of a customer should be less in this circumstance than would be the case if his conviction were for crimes involving the theft or destruction of property.

Third, the conviction for patronizing prostitutes is not recent. Mr. Tenhwa's guilty plea occurred almost fourteen years ago. The more remote the criminal conviction, the less relevant it should be to Eagle Ride's fitness to provide common carrier service. The Commission's concern that Mr. Tenhwa's conviction indicates Eagle Ride's lack of propensity to operate safely and legally should diminish with the passage of time. I conclude that in spite of the criminal conviction of Mr. Tenhwa, Eagle Ride has the propensity to operate safely and legally.

The Joint Protestants argue that Eagle Ride has demonstrated a propensity to operate illegally for a different reason. Joint Protestants' M.B. 6-7. The Joint Protestants point out that Eagle Ride intends to solicit and service customers who request services by way of electronic mail, social media, and the Whats Up Application and will install the Whats Up application on each of its driver's mobile phones. The Joint Protestants contend that Eagle Ride therefore intends to operate in a manner similar to a transportation network company (TNC) but has not sought approval from the Commission to operate as a TNC. Joint Protestants' M.B. 6-7.

The Joint Protestants argue that Eagle Ride should be seeking Commission approval to operate as a dual motor carrier as defined in 66 Pa.C.S. § 102. Joint Protestants' M.B. 6-7. Because Eagle Ride has not sought Commission approval to operate as a dual carrier, the Joint Protestants contend that Eagle Ride has demonstrated that it intends to operate without regard to the established conditions and regulations promulgated by the Commission. Joint Protestants' M.B. 6-7. The Joint Protestants conclude that Eagle Ride has therefore demonstrated a propensity to operate illegally. Joint Protestants' M.B. 6-7. I disagree with the

Joint Protestants because Eagle Ride does not propose to provide service as a dual carrier or TNC.

The Public Utility Code at 66 Pa.C.S. § 102 defines a dual carrier as follows:

Dual motor carrier. A call or demand carrier operating under a certificate of public convenience and providing transportation network services pursuant to a license from the commission. For purposes of this chapter, only certificated call or demand carriers may file an application with the commission requesting a license to operate a transportation network service as a dual motor carrier.

The Public Utility Code at 66 Pa.C.S. § 102 defines a TNC as follows:

Transportation network company or company. A person or entity licensed by the commission to operate a transportation network service in this Commonwealth and that uses a digital network to facilitate prearranged rides. The following shall apply:

- (1) The term shall include a dual motor carrier.
- (2) The term shall not include:
 - (i) A common carrier, common carrier by motor vehicle or motor carrier other than a dual motor carrier.
 - (ii) A company providing transportation under a ridesharing arrangement, as defined under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements.

Therefore, to be either a dual motor carrier or a TNC as defined by 66 Pa.C.S. § 102, Eagle Ride would have to operate a transportation network service. The Public Utility Code at 66 Pa.C.S. § 102 defines transportation network service as follows:

Transportation network service or service.

- (1) A service which meets all of the following:
 - (i) Matches a passenger and transportation network company driver using a digital network in advance of a prearranged ride.
 - (ii) Is characterized by a transportation network company driver offering or providing a prearranged ride to a passenger.
 - (iii) Is rendered on an exclusive basis. For purposes of this paragraph, the term "exclusive basis" means a transportation network service on a given prearranged ride when each individual, party or group may not be required to ride with another passenger

on that prearranged ride unless the individual, party or group consents to additional passengers on the prearranged ride.

- (2) The term includes the periods when:
 - (i) A driver is logged onto a transportation network company's digital network and available for service.
 - (ii) A driver is conducting a prearranged ride.

Therefore, to provide transportation network service, as defined by 66 Pa.C.S. § 102, Eagle Ride would have to match a passenger with a transportation network company driver. The Public Utility Code at 66 Pa.C.S. § 102 defines a transportation network company driver as follows:

Transportation network company driver or driver. As follows:

- (1) An individual who:
 - (i) receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and
 - (ii) uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.
- (2) The term shall include a dual motor carrier driver.
- (3) The term shall not include an individual who receives only reimbursement for actual expenses incurred during the provision of transportation.

Therefore, to be a transportation network driver as defined by 66 Pa.C.S. § 102, a driver working for Eagle Ride would have to use a personal vehicle to provide rides to passengers. The Public Utility Code at 66 Pa.C.S. § 102 defines a personal vehicle as follows:

Personal vehicle. As follows:

- (1) A vehicle that is used by a transportation network company driver and is owned, leased or otherwise authorized for use by the transportation network company driver.
- (2) The term does not include:
 - (i) a call or demand service or limousine service as defined under 53 Pa.C.S. § 5701 (relating to definitions);
 - (ii) a common carrier, common carrier by motor vehicle or motor carrier;
 - (iii) a broker or contract carrier by motor vehicle as defined under section 2501(b) (relating to declaration of policy and definitions);or

(iv) a vehicle operated under a ridesharing arrangement or by a ridesharing operator as defined under the act of December 14, 1982 (P.L.1211, No.279), entitled "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements."

Therefore, to be a personal vehicle, as defined by 66 Pa.C.S. § 102, the vehicle used by a driver working for Eagle Ride for providing rides to passengers would have to be a vehicle owned by that driver. Eagle Ride did not present any evidence that it intends to have its drivers use their personal vehicles to provide its proposed service. Since it does not intend to have its drivers use their personal vehicles to provide its proposed service, Eagle Ride did not need to apply for a license to provide either dual motor carrier or TNC service.

Both the Public Utility Code and Commission orders support this conclusion. The Public Utility Code at 66 Pa.C.S. § 2604.4 governs dual motor carrier authority and states as follows:

2604.4. Dual motor carrier authority.

A dual motor carrier that provides call or demand service under a certificate of public convenience and that has obtained a license from the commission to provide transportation network service may dispatch either a call or demand vehicle or a personal vehicle driven by a dual motor carrier driver to provide service in its authorized service territory. The certificate holder shall ensure, in the same manner used for call or demand fleet vehicles, that personal vehicles used to provide service under this section are in continuous compliance with Department of Transportation inspection standards and the commission's vehicle standards.

Dual motor carrier authority allows a call or demand carrier to dispatch either a call or demand vehicle or a personal vehicle. Eagle Ride did not present any evidence that it intends to dispatch personal vehicles in its proposed service.

In addition, the Commission in Act 164 of 2016-Implementation of Chapter 26, Docket No. L-2016-2574379 (Implementation Order entered December 8, 2016) (Implementation Order) states that, pursuant to 66 Pa.C.S. § 2604.4, dual motor carriers have both a license to operate as a TNC and a certificate of public convenience to provide taxi service. A dual motor carrier may dispatch call or demand vehicles or a personal vehicle. Since Eagle

Ride did not need to apply for a license to provide either dual motor carrier or TNC service, it has not demonstrated a propensity to operate illegally. For the foregoing reasons, I conclude that Eagle Ride has established by a preponderance of the evidence that it intends to operate safely and legally.

To summarize, I conclude that Eagle Ride has established by a preponderance of the evidence that it possesses the technical and financial ability to provide the proposed service. Eagle Ride has demonstrated that it has the propensity to operate safely and legally. I will therefore grant Eagle Ride's application.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa.C.S. § 1102, 52 Pa.Code § 29.31.
2. Eagle Ride has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a).
3. Eagle Ride has established that it is entitled to the relief it is seeking by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).
4. The evidence of record establishes that Eagle Ride possesses the requisite financial and technical fitness to provide the proposed service. 52 Pa.Code § 41.14.
5. The evidence of record establishes that Eagle Ride has the propensity to operate safely and legally. 52 Pa.Code § 41.14.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the application of Eagle Ride Taxi Cab, LLC at Docket No. A-2017-2621976 is approved and the certificate issued to applicant granting the following right:

To transport, by motor vehicle, persons in call or demand service, in the City of Lancaster and within an airline distance of 15 statute miles of the limits of said city

2. That the operating authority granted herein, to the extent that it duplicates the authority now held by or subsequently granted to the carrier, shall not be construed as conferring more than one operating right.

3. That Eagle Ride Taxi Cab, LLC shall not engage in any transportation granted herein until the following is submitted to the Commission:

- A. Form E evidence of insurance.
- B. A tariff establishing just and reasonable rates.

4. That upon compliance with the requirements herein, a certificate of public convenience be issued evidencing the Commission's approval of the right to operate as above determined.

5. That the protests of EZ Taxi, LLC, Express Taxi, LLC, Reading City Cab, LLC and Amigo Cab, LLC are dismissed.

6. That in the event that Eagle Ride Taxi Cab, LLC has not, on or before sixty (60) days from the date of service of this Order, complied with the requirements set forth above, the application shall be dismissed without further proceedings.

Date: March 20, 2018

_____/s/
David A. Salapa
Administrative Law Judge