**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a limited liability : A-2015-2469287

company of the State of Delaware for amendment :

to its common carrier certificate, which grants the :

right to transport by motor vehicle persons in :

experimental service of ride-sharing network for :

passenger trips between points in Pennsylvania, :

excluding those which originate or terminate in the :

Counties of Beaver, Clinton, Columbia, Crawford, :

Lawrence, Lycoming, Mercer, Northumberland and :

Union so as to permit the inclusion of the Counties :

of Beaver, Clinton, Columbia, Crawford, Lawrence, :

Lycoming, Mercer, Northumberland and Union, :

which would allow the transportation of persons :

between all points in Pennsylvania, excluding :

service which is under the jurisdiction of the :

Philadelphia Parking Authority :

**INITIAL DECISION**

**GRANTING PRELIMINARY OBJECTIONS**

**AND DISMISSING PROTEST**

Before

Mary D. Long

Jeffrey A. Watson

Administrative Law Judges

PROCEDURAL HISTORY

On February 27, 2015, Rasier-PA LLC (Applicant), a transportation network company, filed an application to expand the service territory of its experimental service to include passenger trips between points in Beaver, Clinton, Columbia, Crawford, Lawrence, Luzerne, Lycoming, Mercer, Montour, Northumberland and Union Counties, which were excluded from the state-wide experimental authority granted by the Commission on December 5, 2014, at Docket No. A-2014-2424608. The application was advertised in the *Pennsylvania Bulletin* on March 21, 2015.[[1]](#footnote-1) The notice stated that protests must be filed on or before April 6, 2015.

On April 2, 2015, Prime Time Limo Services filed a protest.[[2]](#footnote-2) On April 27, 2015, Rasier-PA filed preliminary objections seeking dismissal of the protest on the basis of legal insufficiency, lack of standing and insufficient specificity. To date, Prime Time Limo has not filed an answer.

For the reasons set forth below, Rasier-PA’s objections will be granted and the protest will be dismissed.

FINDINGS OF FACT

1. The applicant is Rasier-PA LLC.

2. The protestant is Prime Time Limo Services, Inc.

3. Rasier-PA LLC filed preliminary objections seeking dismissal of the complaint.

4. Prime Time Limo Services, Inc. did not file a response to the preliminary objections.

DISCUSSION

Pursuant to the Commission’s rules of procedure, a protest to an application for transportation authority is treated as a pleading and an applicant may file a motion as provided by Section 5.101, relating to preliminary objections. The grounds for preliminary objection are limited, as follows:

§ 5.101. Preliminary objections.

(a) Grounds. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[3]](#footnote-3) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[4]](#footnote-4) Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.[[5]](#footnote-5) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.[[6]](#footnote-6) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[7]](#footnote-7)

The protest of Prime Time Limo is a cover letter which sets forth the grounds for protesting the application: “As a citizen of Pennsylvania, I feel that the application should be denied until such time any and all litigation with the aforementioned utility is resolved.” Prime Time Limo further states that it holds statewide authority from the Commission and that it has a “vested interest in the same market area as the applicant.”

The Applicant contends that the protest should be dismissed for lack of standing because the Protestant does not hold authority as transportation network company. We have rejected this argument that only carriers with experimental authority have standing to challenge the application of a transportation network company:

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. The Applicant contends that the Protestants do not have operating authority in actual or potential conflict with the authority sought by Applicant to have the requisite standing to protest the application.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. “In simple terms, “standing to sue” is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court.” 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 . . . .

The application provides that the vehicles which will be eligible to participate in the Applicant’s transportation program will include “street-legal coupes, sedans or light-duty vehicles, including vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks.” The application does not explicitly state that there would be any particular restriction on the transportation, i.e. that it would be exclusive or non-exclusive, that the transportation would exclude trips to and from airports or that vans and minivans would only transport one person at a time. Indeed, read as a whole, it appears that the Applicant would use the proposed service to meet nearly any sort of transportation need sought. The Protestants hold 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 Protestants’ authority and the preliminary objection based on standing will be dismissed.[[8]](#footnote-8)

Similarly, the statewide transportation service provided by the Protestant is sufficiently similar to that offered by the Applicant. Therefore, there is a sufficient allegation of a conflict of authority to resist dismissal of the protest by preliminary objection.

However, the Commission’s regulations include detailed instructions for the information which 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:

(I) The applicant’s name and the docket number of the application.

(II) The name, business address and telephone number of the protestant.

(III) The name, business address and telephone number of the protestant’s attorney or other representative.

(IV) A statement of the protestant’s interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

(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.

(VI) A statement of any restrictions to the application which would protect the protestant’s interest, including a concise statement of any amendment which would result in a withdrawal of the protest. [[9]](#footnote-9)

Although Prime Time Limo’s protest is on company letterhead which includes its name and business address, the protest lacks any specific information about the type of Commission authority which it holds or the specific adverse impact that it will suffer if the application is granted. Moreover, we note that the pendency of other litigation is not a factor which the Commission typically considers when reviewing an application for transportation authority.[[10]](#footnote-10)

Therefore, we find that Prime Time Limo’s protest fails to conform to the Commission’s regulations regarding the content of a protest. Rasier-PA’s preliminary objections are therefore granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. §§ 1102, 1103.

2. The protest fails to conform to Commission regulations and is insufficiently specific. 52 Pa.Code § 5.101(a)(2) and (a)(3).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection of Raiser-PA LLC. seeking dismissal of the protest of Prime Time Limo Services is granted.

2. That the protest of Prime Time Limo Services is dismissed.

/s/

Mary D. Long

Administrative Law Judge

/s/

Date: June 18, 2015 Jeffrey A. Watson

Administrative Law Judge

1. 45 Pa.B. 1474 (March 21, 2015). [↑](#footnote-ref-1)
2. On March 25, 2015, MTR Transportation, Inc. t/d/b/a/ K-Cab Co. and Billtown Cab Co. Inc. filed protests to the application. Rasier-PA has also filed preliminary objections seeking dismissal of those protests which have been addressed in a separate order. [↑](#footnote-ref-2)
3. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). [↑](#footnote-ref-3)
4. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). [↑](#footnote-ref-4)
5. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

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

   [↑](#footnote-ref-6)
7. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008). [↑](#footnote-ref-7)
8. *E.g., Application of Rasier-PA LLC*, Docket No. A-2014-2424608 (Interim Order Denying Preliminary Objections to the Protests of Various Call and Demand Carriers dated August 11, 2014). [↑](#footnote-ref-8)
9. 52 Pa.Code § 3.381(c)(1)(A). [↑](#footnote-ref-9)
10. See 52 Pa.Code § 41.14. [↑](#footnote-ref-10)