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June 2, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Application of Raiser-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, Pennsylvania
Docket No. A-2014-2416127

Dear Secretary Chiavetta:

On behalf of Raiser-PA LLC, I have enclosed for electronic filing the Preliminary Objections of Raiser-PA LLC to the Protest of Concord Limousine, Inc. in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,



Karen O. Moury

KOM/tlg
Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr. (via First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Raiser-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing : Docket No. A-2014-2416127
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
Allegheny County, Pennsylvania :

NOTICE TO PLEAD

TO: Michael S. Henry, Esq.
2336 S. Broad Street
Philadelphia, PA 19145

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Raiser-PA LLC to the Protest of Concord Limousine, Inc. within **ten (10) days** from service of this Notice, the facts set forth by Raiser-PA LLC in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Raiser-PA LLC, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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

Dated: June 2, 2014



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
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Allegheny County, Pennsylvania :

PRELIMINARY OBJECTIONS TO THE PROTEST OF CONCORD LIMOUSINE, INC.

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Rasier-PA LLC, a wholly owned subsidiary of Uber Technologies, Inc. (“Rasier”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files these Preliminary Objections pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.101(a), seeking to dismiss the timely Protest filed by Concord Limousine, Inc. (“Concord”) and in support thereof, avers as follows:

I. Introduction and Background

1. On April 14, 2014, Rasier filed an application requesting the issuance of a certificate of public convenience evidencing approval to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania, pursuant to 52 Pa. Code § 29.352. Rasier is a limited liability company organized under the laws of Delaware and registered as a foreign limited liability company with the Pennsylvania Department of State at Corporation Bureau Entity Identification Number 4262217.

2. Notice of Rasier’s application was published in the *Pennsylvania Bulletin* on April 26, 2014. Protests were due by May 12, 2014.

3. On May 12, 2014, Concord filed a timely protest. Concord protests Rasier's application on several bases, including: allegations that the proposed service is in actual or potential conflict with their authority to provide limousine service throughout Pennsylvania, including Allegheny County; allegations that the proposed service falls within the definition of "broker" within the meaning of Section 2502 of the Public Utility Code ("Code"), 66 Pa.C.S. § 2502; allegations that the proposed service does not differ from other motor carrier services and therefore does not qualify as "experimental service" under the Commission's regulations at 52 Pa. Code § 29.352; and allegations that Rasier will not be able to obtain insurance coverage required by the Commission's regulations. Concord also makes general averments as to public need and fitness.

4. Through these Preliminary Objections, Rasier seeks the dismissal of Concord's protest on the grounds that Concord lacks standing to participate in the proceeding and that the protest is a legally insufficient pleading in that it contains inappropriate and unfounded legal conclusions about the nature of the proposed experimental service, which do not warrant the scheduling of a hearing or otherwise allege grounds upon which relief can be granted, particularly in view of the Commission's order in the matter of the *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order adopted on May 22, 2014 ("Yellow Cab Order").

II. Legal Standards Applicable to Preliminary Objections

5. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

6. The grounds for preliminary objections are set forth in 52 Pa Code § 5.101(a)(1)-(7). Section 5.101(a)(4) permits preliminary objections on the basis of the legal insufficiency of a pleading; Section 5.101(a)(7) allows preliminary objections based on the lack of a party's standing to participate in the proceeding.

7. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, supra.

8. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa.Cmwlth. 2007).

A. Preliminary Objection No. 1: Lack of Standing

9. Concord claims to have standing to file the protest on the basis that the proposed experimental service is in actual or potential conflict with its existing service. According to the protest, Concord currently holds authority to provide limousine service through Pennsylvania, including Allegheny County.

10. In prior cases addressing a party's standing to protest an application for motor carrier authority, the Commission has repeatedly found that a party must have some operating authority in actual or potential conflict with the authority sought by the applicant to have the requisite standing to protest the application. *See Application of Carriage Limousine Services*,

Inc., Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994 (became final by operation of law via Order entered on December 23, 1994). In that case, the Commission found that a protestant having call or demand authority lacked standing to protest an application for amendment of a certificate of public convenience seeking additional service area in which to render limousine service. *See also Application of Kutztown Area Transport*, Docket No. A-2009-2140250 (Order entered October 18, 2010); *Application of K&F Medical Transport*, Docket No. A-2008-2020353 (Order entered July 8, 2008).

11. Rasier’s application proposes experimental service that would use a digital platform to connect passengers to independent ride-sharing operators. Under Rasier’s proposal, riders would request transportation through the Internet or a mobile application on their smartphones. In the Yellow Cab Order, the Commission described a similar service as being sufficiently different to be distinguishable from existing limousine and call or demand services so as to qualify as “experimental service.” In distinguishing the proposed experimental service from existing services, the Commission pointed to the use of an App-based technology to arrange service as allowing for a wider ranging, faster and more user friendly scheduling of transportation services. Since Rasier’s application also proposes experimental service that is distinguishable from the service currently offered by Concord, the latter’s existing limousine authority does not confer standing upon which to oppose this application.

B. Preliminary Objection No. 2: Legal Insufficiency of Pleading

12. The protest is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Further, a hearing is not necessary and would not serve the public interest in this matter. *See* 66 Pa.C.S. §703(b).

13. Rather than making factual averments necessitating a hearing, the protest offers conclusions of law, unwarranted inferences from facts, argumentative allegations and expressions of opinion, which the Commission has already addressed and nullified by its action in the Yellow Cab Order. Finding that the proposed service is the type of new, innovative service that qualifies as experimental service under the regulations, the Commission stressed in the Yellow Cab Order the importance of ensuing that the current regulatory structure is not a barrier to desirable changes in the transportation industry facilitated by advancements in technology.

14. As a result of the Commission's findings in the Yellow Cab Order, the protest's legal claims about the nature, legality and proper classification of the proposed service have already been addressed, need not be subjected to a hearing and state no basis upon which relief can be granted.

15. The protest's general allegations regarding fitness and public need do not present sufficient information to warrant a hearing or further consideration by the Commission. In the Yellow Cab Order, the Commission has already found that the proposed experimental service is responsive to a public demand or need, observing that this type of service allows for a wider ranging, faster and more user friendly scheduling of transportation services. The Commission did not consider the effect that the proposed experimental service would have on existing motor carriers. In fact, in a Joint Statement accompanying the adoption of the Yellow Cab Order, Commissioner Witmer and Commissioner Brown described this type of service as having the potential to revolutionize the transportation market and provide Pennsylvania customers with more options for travel.

16. The protest's allegations regarding the ability of Rasier to comply with the Commission's insurance requirements are unfounded and do not warrant a hearing. Rasier has stated in its application that it will provide documentation to the Commission evidencing insurance coverage that exceeds the Commission's requirements, and it is within the scope of the Commission's power and authority to determine whether Rasier's proof of insurance complies with its requirements. In the Yellow Cab Order, the Commission thoroughly addressed the subject of insurance and conditionally approved the application upon the filing of acceptable insurance documentation.

Conclusion

WHEREFORE, for the foregoing reasons, Rasier-PA LLC respectfully requests that the Commission grant these Preliminary Objections, dismiss the protest filed by Concord Limousine, Inc. and grant Rasier such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: June 2, 2014



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