

The Insurance Federation of Pennsylvania, Inc.

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Samuel R. Marshall
President & CEO

June 12, 2014

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

VIA ELECTRONIC FILING

**Re: Application of Rasier, PA, LLC;
A-2014-2416127**

Dear Secretary Chiavetta:

Enclosed for filing is the Response of the Insurance Federation to the Preliminary Objections filed by Rasier, Inc. in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Sincerely,



Samuel R. Marshall

C: Administrative Law Judges Mary D. Long and Jeffrey Watson (via First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Rasier, PA, LLC : Docket No. A-2014-2416127

**RESPONSE OF THE INSURANCE FEDERATION OF PENNSYLVANIA
TO THE PRELIMINARY OBJECTIONS FILED BY RASIER- PA, LLC**

The Insurance Federation of Pennsylvania, Inc. ("Insurance Federation"), pursuant to 52 Pa.Code Section 5.101, files this Response to the Preliminary Objections filed by Rasier-PA, LLC ("the Applicant") to the Insurance Federation's Protest of the above-captioned Application.

1. No response.

2. No response.

3. The basis of the Insurance Federation's Protest to the Applicant's Application is as set forth in the Protest. The Applicant's summary of it misses much of the Protest.

4. As fully detailed in later in this Response, the Insurance Federation, on behalf of its auto-insuring members, has standing to Protest this Application. Further, the Applicant claims the Insurance Federation's

Protest is “a legally insufficient pleading in that it contains inappropriate and unfounded legal conclusions about the proposed experimental service...” Nowhere in its Preliminary Objections, however, does the Applicant say what those allegedly “inappropriate and unfounded” legal conclusions are.

5. No response.

6. No response.

7. No response.

8. No response.

9. The Applicant incorrectly characterizes the Insurance Federation’s standing behind its Protest, saying the Federation “claims to have standing to file the protest on the basis its members may be harmed if Rasier does not comply with the Commission’s insurance requirements.” To the contrary, the interest of the auto-insuring members of the Insurance Federation, and therefore the interest of the Federation, is far more direct, immediate and substantial.

- Paragraph 17 of the Application states the Applicant will fulfill the Commission's insurance requirements by requiring its drivers "to provide proof of valid and current liability insurance on the vehicle to be used in offering ride-sharing services in at least the amounts specified in 75 Pa.S.C. Section 1702 and 75 Pa.S.C. Section 1711." That insurance coverage is provided by the auto-insuring members of the Insurance Federation.

- Paragraph 18 of the Application states the Applicant will also submit to the Commission "proof of adequate insurance evidencing policies and coverage that exceed the minimum standards required by the Commission." That is reminiscent of the "not exactly" promises in the old Xerox ad: The Application admits it won't be providing that coverage directly itself. Instead, its policy is merely an Excess Liability Policy, with the Operator's own policy – the policies provided by the Insurance Federation's serving as the primary insurance to satisfy the Commission's requirements.

The paragraph goes on to describe other elements of its policy as "contingent to a Operator's personal insurance policy [again, that written by the Insurance Federation's auto-writing members], meaning it will only pay if the personal auto insurance completely declines or pays zero." It also concedes its comprehensive and

collision coverage is contingent on the Operator's personal insurance policy being found not to apply.

The Applicant therefore intends to provide only "excess" coverage – meaning coverage that applies only after coverage from other insurers, including the auto-insuring members of the Insurance Federation, has been sought and exhausted. The Applicant is relying on the auto-insuring members of the Insurance Federation to provide the insurance the Commission requires. Nothing could be more direct, immediate and substantial. The harm is not so much what happens if the Applicant does not comply with the Commission's insurance requirements. It is what happens if the Applicant's proposed means of compliance – which directly, immediately and substantially brings in the auto-writing members of the Insurance Federation - is approved.

10. The Applicant contends "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." That is an unduly restrictive interpretation of standing in these proceedings, and it ignores the unique exposure this Application creates for the auto-insuring members of the Insurance Federation. It is that exposure – not a general one incidental, routine or expected in an auto insurer's coverage of its

insureds – that gives the Insurance Federation, on behalf of its auto-insuring members, standing.

11. The Commission should not limit standing in this action to only certified motor carrier authorities. Instead, the correct standard is as set forth (albeit misapplied) by the Applicant in the next two paragraphs of its Preliminary Objections.
12. The Applicant is correct in stating that a party must have a direct, immediate and substantial interest to have standing to protest an application, not based on mere conjecture and speculation.
13. The Applicant is incorrect in characterizing the Insurance Federation's claims as speculative about future impact. That misunderstands the nature of insurance: An insurer's interest and exposure begin when someone counts on its coverage, which is well before a claim under that coverage is brought. The only speculation here is that of the Applicant: It is speculating that the auto-insuring members of the Insurance Federation will provide the coverage the Commission requires, despite knowing the exclusions in the policies of those auto insurers, despite limited means of verifying that such policies are in force, and despite the Protest filed by the Insurance Federation on their behalf.

The Applicant is equally incorrect in claiming that the Insurance Federation and its auto-writing members lack a direct, immediate and substantial interest in this Application:

- The interests of the Insurance Federation's auto-insuring members will be adversely impacted by the Applicant's proposed means of fulfilling the Commission's insurance requirements: As the Applicant includes the insurance provided by the Federation's auto-insuring members, without their consent, to satisfy those insurance requirements, the Federation's members have direct and adverse exposure and therefore a direct interest.

- There is a close causal nexus between the Applicant's actions and the exposure they cause for the Insurance Federation's auto-insuring members: The moment the Applicant's drivers take to the road, they cause unanticipated liability exposure for the Insurance Federation's auto-insuring members, which is by definition an immediate interest.

- The liability exposure the Application creates for the Insurance Federation's auto-insuring members is unique to them, not to any other entities or to the general public, as it comes under their insurance policies. That makes the interests of the Federation's

auto-insuring members unique and discernable from that of all citizens in seeking compliance with the law – thereby making the interests of the Federation’s auto-insuring members substantial.

14. The applicant claims the Insurance Federation’s Protest is “legally insufficient because it fails to state a claim upon which the Commission can grant relief.” To the contrary, as requested by the Insurance Federation in its Protest, the Commission could grant relief by either rejecting the Application or conditioning it on the Applicant’s providing primary coverage for its Operators in the required amounts, and by ordering the Applicant to address the other concerns and recommended amendments set forth in the Insurance Federation’s Protest. Given the nuances of the coverage the Applicant proposes, a hearing to examine and question its adequacy would be in the public interest: It is the public who ultimately depends on that coverage.

15. The Insurance Federation appreciates the Commission’s intention to ensure that providers such as the Applicant comply with its insurance requirements. Unlike the Yellow Cab Application cited by the Applicant - where Yellow Cab provides its own insurance to fulfill the Commission’s requirements - the Applicant wants to do so in large measure through insurance provided by the Insurance Federation’s auto-insuring members. It proposes this despite knowing the Insurance Federation’s auto-insuring

members disagree as to whether they provide any coverage – that is the issue of the livery exclusion emphasized in the Federation’s Protest.

16. The Applicant acknowledges the importance the Commission places on fulfilling its insurance requirements, and it relies on the insurance provided by the auto-writing members of the Insurance Federation to attempt to fulfill those requirements. And yet it objects to the Insurance Federation having a voice in examining this Application. As the Insurance Federation outlined in its Protest, the Applicant either misunderstands or obscures the coverage it proposes, at least as it includes coverage provided by the auto-writing members of the Insurance Federation. That is ample reason for a hearing and for the Insurance Federation’s involvement in this Application.

The Applicant could readily take away the Insurance Federation’s standing by providing its own insurance rather than relying on the insurance of the Federation’s auto-insuring members: No direct, unique and contested exposure would mean no direct, immediate and substantial interest for the Insurance Federation. Until that happens, the Applicant’s objections to the standing it has created for the Insurance Federation, and to the legal sufficiency of the Federation’s Protest, ring hollow.

The Commission should dismiss the Applicant's Preliminary Objections.

Respectfully submitted,

Samuel R. Marshall

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Rasier, PA, LLC : Docket No. A-2014-2416127

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

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



Samuel R. Marshall
Insurance Federation of Pennsylvania

Dated this 12th day of June, 2014, in Philadelphia, Pennsylvania