

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2416127

RASIER-PA, LLC

ANSWER TO PRELIMINARY OBJECTIONS

Protestant, Concord Limousine, Inc., by and through its attorney, Michael S. Henry, Esquire, hereby responds to the preliminary objections of Applicant as follows:

1. Denied as stated. It is admitted that Applicant, Rasier-PA, LLC (“Rasier”), filed an application on April 14, 2014. Since the application speaks for itself, the remaining averments are denied to the extent they are inconsistent therewith. By way of further answer, Protestant disputes Applicant’s claim that it is applying for experimental service within the meaning of 52 Pa. Code §29.352. On the contrary, Protestant asserts that the Applicant is applying for the right to act as a broker within the meaning of Section 2502 of the Public Utility Code, 66 Pa. C.S. §2502, to facilitate limousine service by uncertified providers, which will have a direct and immediate adverse impact on Protestant’s right to provide limousine service

in Pennsylvania under its duly issued certificate of public convenience. Thus, there is a genuine dispute between the parties as to the very nature of the application that cannot be resolved by way of preliminary objections.

2. Admitted.

3. Denied as stated. It is admitted that Protestant filed a timely protest on May 12, 2014. Since the protest speaks for itself, the remaining averments in this paragraph are denied to the extent they are inconsistent therewith.

4. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Protestant has alleged sufficient fact, which it will prove at any evidentiary hearings held in this matter, that it has standing because the application seeks authorization to provide services as a broker within the meaning of Section 2502 of the Public Utility Code, 66 Pa. C.S. §2502, to facilitate limousine service by uncertified providers, which will have a direct and immediate impact on Protestant's right to provide limousine service under its duly issued certificate of public convenience.

By way of further answer, like the application and the preliminary objections filed by Applicant, the protest contains legal allegations, not conclusions. Protestant asserts that it has substantial

evidence to support its legal allegations and to contradict the legal allegations in the application. Protestant further asserts that due process requires that Protestant be given an opportunity to present evidence at a hearing to resolve a genuine factual dispute between the parties, so that the Commission may determine whose legal allegations are founded. Accordingly, Protestant asserts that it is premature for the Commission to dismiss the protest based on preliminary objections because there is a genuine dispute between the parties as to the underlying facts upon which the application is based and the Commission must, at this stage of the proceedings, accept all of the well-pleaded facts contained in the protest as true for the purpose of deciding preliminary objections.

By way of further answer, Petitioner asserts that the application that was the subject of the Commission's order in *Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 ("*Yellow Cab*"), is easily distinguished from the present application in that the applicant in that case was seeking an extension of its existing call or demand service, wherein the applicant proposed to provide its call or demand service under its existing certificate using its own fleet of vehicles pursuant to lease agreements between the applicant and its drivers through the use of a "Transportation Network Company" which connects passengers and drivers

through the use of an online enabled platform. In stark contrast, the applicant in the present case holds no Commission authority and therefore does not propose to extent its existing service. Rather, the applicant is the “Transportation Network Company” applying for the right to facilitate transportation service between passengers and uncertified providers.

5. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

6. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Protestant denies that its protests is legally insufficient and denies that it lacks standing for the reasons set forth above.

7. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

8. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Petitioner asserts that, for the purposes of deciding the Applicant’s preliminary objections, the Commission is required to accept as true all well-pleaded facts in Protestant’s protest, including Protestant’s allegations that the Applicant is a “Transportation Network Company” that does not propose to provide transportation service itself or to extent its existing authorized

service, but rather proposes to facilitate the provision of transportation service by uncertified providers by connecting passengers and drivers through the use of an online enabled platform.

RESPONSE TO PRELIMINARY OBJECTION 1: LACK OF STANDING

9. Denied as stated. This paragraph contains allegations relating to the protest, which speaks for itself; therefore the averments in this paragraph are denied to the extent they are inconsistent with the protest. By way of further answer, Protestant has standing to protest the application in this matter because the application proposes to facilitate the provision of transportation service by uncertified providers by connecting passengers and drivers through the use of an online enabled platform. The provision of transportation service by uncertified providers will have a direct and immediate adverse impact of Protestant's right to provide transportation service in Pennsylvania.

10. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Protestant asserts that the transportation service that will be provided if the application is granted is, in reality, limousine service, which will be in actual or potential conflict with Protestant's authority.

11. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Applicant's allegation that it proposes to provide experimental service is a legal conclusion that is not supported by the facts, which support the conclusion that the Applicant proposes to facilitate the provision of transportation service by uncertified providers by connecting passengers and drivers through the use of an online enabled platform. It is illegal under Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, to facilitate transportation service by uncertified providers and the facilitation of such service will be in actual or potential conflict with Protestant's service.¹ Service providers are required to obtain a certificate of public convenience prior to providing service. The present application seeks authority to facilitate transportation service, not to provide transportation service directly. On this basis, the present application is easily distinguishable from the application in the *Yellow Cab* case.

RESPONSE TO PRELIMINARY OBJECTION 2

¹ 66 Pa. C.S. §1101 states: "Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience *first had and obtained*, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied." (emphasis added)

LEGAL INSUFFICIENCY OF PLEADING

12. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the protest seeks dismissal of the protest based on the fact that it seeks authorization to facilitate the provision of transportation service by uncertified providers, which is clearly illegal. The Commission most certainly has the power to deny an application to provide illegal service. By way of further answer, a hearing is required in this matter because the facts upon which the parties rely in support of their legal allegations are in dispute.

13. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the protest contains both factual and legal allegations, both of which are in dispute and may only be resolved through the scheduling of evidentiary hearings, the submission of briefs on the legal issues, and a recommend decision by an administrative law judge. By way of further answer, the Commission's decision and order in the *Yellow Cab* case is easily distinguishable from the present application proceeding for the reasons set forth above and does not dictate an outcome here. In fact, the Commission's approval of an extension of existing authority in the *Yellow Cab* case supports Protestant's position in this matter because the Commission's approval was based on the fact that

the *Yellow Cab* would be providing the service the Commission deemed experimental, unlike the present case where the proposed service would be provided by uncertified providers. By way of further answer, the use of an online enabled platform to facilitate communications between passengers and service providers is the latest innovative use of advanced communications technology; however, the underlying transportation service remains relatively unchanged and cannot be distinguished in any meaningful way from limousine and call or demand service. The fact that a transportation provider can access a communication system that is more efficient and reliable does not relieve the transportation provider from the necessity of complying with the Public Utility Code's requirement of first obtaining a certificate of public convenience, nor does it give the communications provider the basis for an application for any form of motor carrier service.

14. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, as fully explained above, the present application is easily distinguishable from the application that was at issue in the *Yellow Cab* and presents factual and legal issues that were not before the Commission in that case. Accordingly,

hearings are necessary, as well as the submission of briefs, in order to resolve the factual and legal issues presented herein.

15. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the issues of fitness raised by Protestant clearly warrant a hearing, particularly with regard to the issue of insurance. The facilitation of transportation services provided by private individuals in their own vehicles raises significant and very troubling issues about the insurability of the proposed service, since most private automobile policies contain a livery exception and no insurance policy covers property in which the policy holder has no insurable interest.

By way of further answer, Protestant is not opposed to the use of innovative technology to make transportation service more reliable and efficient. Protestant objects to the provision of transportation service by uncertified providers, particularly where the service is indistinguishable in any meaningful way from limousine and call or demand service and will have an immediate and direct adverse impact on Protestant's operations. Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, is explicit. It is unlawful to provide transportation without first obtaining a certificate of public convenience and it is unlawful to facilitate such transportation. There is nothing experimental about facilitating unlawful transportation.

16. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Applicant has the burden of proving that it can obtain insurance coverage in compliance with the Commission's requirements. Protestant disputes the Applicant's factual allegations concerning its ability to obtain insurance to cover the operation of privately owned vehicles that provide transportation for hire in light of universally employed livery exceptions that are part of every private passenger insurance policy issued in this Commonwealth. Furthermore, Protestant disputes Applicants factual allegation that it can obtain insurance to cover the operations of vehicle in which it has no insurable interest. This is a factual dispute that must be resolved with evidentiary hearings. The fact that the Applicant bases its preliminary objection on the fact that it can produce evidence that it can meet the Commission's insurance requirements reveals the necessity for hearings in this matter.

WHEREFORE, Protestant, Concord Limousine, Inc., respectfully requests this Honorable Commission to deny the Application.

Respectfully submitted,

Michael S. Henry

Michael S. Henry
Attorney for Protestant
2336 S. Broad Street
Philadelphia, PA 19145
(215) 218-9800
mshenry@mshenrylaw.com

Date: June 12, 2014

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Answer to the following:

Rasier-PA, LLC
182 Howard Street, No. 8
San Francisco, California 94105

Karen O. Moury, Esquire
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357

Michael S. Henry

Michael S. Henry
Attorney for Protestant
2336 South Broad Street
Philadelphia, PA 19145
215-218-9800

Date: June 12, 2014

VERIFICATION

MICHAEL S. HENRY, ESQUIRE verifies that he is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Michael S. Henry
Michael S. Henry

Dated: May 5, 2014