



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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July 9, 2014

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

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Re: Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., for Emergency Temporary Authority to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA
Docket No. A-2014-2429993

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") files this letter-response to the Application of Rasier-PA LLC ("Rasier") for Emergency Temporary Authority ("Application for ETA") in the above-captioned matter.

I&E offers its response as the Commission has considered information contained in protests to applications for emergency temporary authority as an aid in determining whether the criteria for emergency temporary authority has been established.¹ Similarly, I&E respectfully requests that the Commission consider the information set forth herein.

I&E serves as the Commission's prosecutory bureau and, among other duties, is responsible for enforcing compliance with state and federal motor carrier safety laws and regulations.² I&E has standing and authority to participate in all Commission proceedings. *Id.* at 5.

On July 2, 2014, Rasier filed the above-captioned Application for ETA. The criteria for emergency temporary authority are set forth in Section 3.384 of the Commission's regulations, 52 Pa. Code § 3.384. Specifically, grants of emergency temporary authority are made upon the establishment of an immediate need for the transportation of passengers. 52 Pa. Code § 3.384(b)(1). An immediate need will not be found to exist when there are other

¹ *Application of Time Enterprises, Inc., for emergency temporary authority, to transport, as a common carrier, asphalt, from the county of Philadelphia to the township of Pittston, Luzerne County*, Docket No. A-00108160, F. 600 (Order entered July 7, 1988).

² See 66 Pa.C.S. § 308.2(a)(11) and *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

carriers capable of rendering the service. 52 Pa. Code § 3.384(b)(2). Further, emergency temporary authority may be denied if the Commission has evidence that the carrier applicant has a history of willful or flagrant violations of the Public Utility Code or Commission regulations. 52 Pa. Code § 3.384(c)(2).

I&E respectfully requests that the Commission deny Rasier's Application for ETA because Rasier has not, as a matter of law, presented evidence of an immediate need for its service and has not demonstrated the existence of emergency conditions to warrant the granting of emergency temporary authority. Moreover, I&E maintains serious doubt regarding Rasier's fitness and asserts that it is questionable whether Rasier possesses a propensity to lawfully operate.

Rasier Cannot Sustain Its Burden Of Showing An Immediate Need For Its Service By Evidencing Uber's Illegal Operations

In support of its request for emergency temporary authority, Rasier presents the testimonials³ of passengers who received unauthorized service utilizing the digital software of Uber Technologies, Inc. ("Uber"). See Application for ETA at 1-2, Exhibit B.

Rasier is a wholly owned subsidiary of Uber. The president and chief executive officer of Uber, Travis Kalanick, allegedly manages the operations of Rasier. See Application for ETA at p. 3, ¶ 5. However, Uber has never, at any point, applied for a brokerage license or certificate of public convenience and, thus, does not possess the authority to legally operate as a licensed broker or a certificated motor carrier within the Commonwealth of Pennsylvania.

I&E has multiple on-going enforcement proceedings against Uber and its partner

³ The testimonials provided by Rasier do not comply with the Commission's regulations at Section 3.383(c), 52 Pa. Code § 3.383(c), in that they do not contain certifications of their accuracy and are not signed by the person who submitted the statement. Therefore, in addition to other reasons that are more fully explained herein, the Commission should not consider the testimonials because they are not signed and certified as being accurate.

drivers.⁴ As evidenced by the testimonials provided by Rasier as attachments to the Application for ETA, Uber currently engages in brokering unauthorized intrastate transportation for compensation between points in the Commonwealth using non-certificated drivers. Since March 13, 2014, Uber has been operating a ride-sharing passenger transportation service in Pittsburgh that enables passengers to obtain rides from drivers who registered with Uber (“Uber driver”). Just like Rasier’s proposed service, Uber rides are facilitated by Uber through the use of internet and mobile application software (“the Uber app”). Uber drivers use their personal, non-commercially licensed and non-commercially insured vehicles for the purposes of providing transportation services to the public for compensation.

On July 1, 2014, I&E obtained interim emergency relief against Uber. Uber was directed to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles until it secures appropriate authority from the Commission. July 1, 2014 Order at Ordering Paragraph No. 2. Despite being ordered to immediately cease brokering transportation through its app, Uber defiantly continues to operate.⁵

Rasier offers the testimonials of Uber customers to evidence a public need for its service. However, evidence of the provision of unauthorized service cannot, as a matter of law, sustain an applicant’s burden of proving need for the service. *Nat’l Retail Transp. v. Pa. Pub. Util. Comm’n*, 530 A.2d 987 (1987) (holding that an applicant for common carrier authority, who has provided unauthorized services in the past, cannot sustain its burden of proving the need for service through evidence of an illegal course of conduct if such conduct represents a bad faith violation of the Code or the Commission’s regulations or orders). See also *Armored Motor Serv. Corp. v. Pa. Pub. Util. Comm’n*, 411 A.2d 900 (Pa. Cmwlth. 1980) (finding that evidence of illegal activity deliberately

⁴ See *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Complaint filed on June 5, 2014). I&E has also taken enforcement action against Uber drivers. On April 22, 2014, I&E filed non-traffic citations before Pittsburgh Magisterial District Judge Eugene Ricciardi against eleven (11) Uber drivers for operating as a motor carrier without possessing a Certificate of Public Convenience, pursuant to 66 Pa.C.S. § 3310. In addition, on June 5, 2014, I&E filed complaints before the Commission against the same eleven (11) Uber drivers for transporting passengers for compensation between points in Pennsylvania while not holding Certificates of Public Convenience, which is a violation of 66 Pa.C.S. § 1101. Further, I&E filed a Petition for Interim Emergency Relief on June 16, 2014 seeking an order requiring Uber to cease and desist from unlawfully brokering transportation to uncertificated drivers. I&E’s Petition was granted on July 1, 2014. *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846 (Order entered July 1, 2014) (hereinafter referred to as the July 1, 2014 Order).

⁵ See Bob Bauder, *Uber, Lyft to Give Lift to Busy Weekend; Ride-sharing Companies to Operate. Shrug-off PUC Cease and Desist Order*, Pittsburgh Tribune Review, July 4, 2014.

rendered by the applicant is improper for consideration by the Commission and must be excluded). Therefore, the Commission cannot consider the testimonials offered by Rasier as evidence of need because Uber, to which Rasier is a wholly-owned subsidiary, deliberately continues to provide unauthorized service in bad faith.

Additionally, other passenger motor carriers in Allegheny County are authorized by the Commission to provide call and demand service, thus satisfying this particular transportation need. Consistent with Section 3.384(b)(2) of the Commission's regulations, an immediate need does not exist to warrant the granting of Rasier's Application for ETA because other carriers are capable of rendering the service. 52 Pa. Code § 3.384(b)(2).

Rasier May Lack A Propensity To Operate Lawfully And This Issue Should Be Fully Adjudicated In Its Original Application Proceeding

Moreover, I&E seriously questions the fitness of Rasier to provide service as its parent company, Uber, whose chief executive officer is the same individual who manages Rasier, is willfully and flagrantly violating the Public Utility Code, the Commission's regulations and the July 1, 2014 Order directing it to cease and desist its operations. Pursuant to Section 3.384(c)(2) of the Commission's regulations, if the Commission has evidence that the applicant has a history of willful or flagrant violations of the statute or regulations, then there are grounds to deny the application for emergency temporary authority. 52 Pa. Code § 3.384(c)(2). The operations of Rasier and Uber are so inextricably intertwined that Uber's unlawful operations may implicate Rasier's propensity to lawfully operate. For example, Rasier's Application for ETA is signed and verified by an individual who identifies himself as a representative of Uber. Rasier's fitness is an issue that should be fully adjudicated in its original application proceeding⁶ and its Application for ETA should not be granted.

Rasier Has Not Established The Existence Of An Emergency Situation To Merit The Granting Of Its Application For ETA

Pursuant to Section 1103(d) of the Public Utility Code, the Commission "may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, **and in emergencies** grant temporary certificates . . . pending action on permanent certificates" 66 Pa.C.S. § 1103(d) (emphasis added). Section 3.1 of the Commission's regulations defines "emergency" as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting." 52 Pa. Code § 3.1. In order to be granted emergency

⁶ *Application of Rasier-PA, LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience to Operate an Experimental Ride-Sharing Network Service*, Docket No. A-2014-2416127.

temporary authority to operate, an applicant must demonstrate that an emergency situation exists and that no other service is available as required.⁷

In its Application for ETA, Rasier has not demonstrated the existence of any emergent circumstance. While passengers may enjoy the unauthorized service that Uber provides, this does not constitute an emergency situation presenting a “clear and present danger to life or property” that should permit Rasier to immediately operate.

Additionally, in the July 1, 2014 Order that granted I&E’s petition for emergency interim relief, the presiding Administrative Law Judges (“ALJs”) found that the requested relief, directing Uber to cease and desist from unlawfully operating, is not injurious to the public interest. The presiding ALJs held that:

It is therefore **not in the public interest** to permit Uber to continue to provide the contested service, pending a full and complete hearing and providing all parties with a full and fair opportunity to be heard.”

July 1, 2014 Order at 15 (emphasis added).

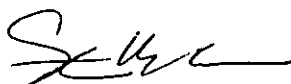
Similarly, denying Rasier’s Application for ETA is not harmful to the public. Rather, such a denial protects the public because it allows all the questions that were raised in the protests to Rasier’s original application to be fully vetted.

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⁷ *Application of South Shore Limousine, LLC, for emergency temporary authority, to begin to transport, as a common carrier, by motor vehicle, persons in Group and Party eleven (11) to fifteen (15) persons including the driver, from points in the counties of Erie and Crawford, to points in Pennsylvania and return.* Docket Nos. A-2012-2297115, A-2012-2297105 (Order entered August 2, 2012).

Wherefore, for all of the foregoing reasons, I&E respectfully requests that the Commission deny Rasier's Application for Emergency Temporary Authority.

Sincerely,



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