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July 21, 2014

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VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary Pennsylvania Public Utility Commission 400 North Street, 2<sup>nd</sup> Floor Harrisburg, PA 17120

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JUL 2 I 2014 PA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

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 Pennsylvania Taxi & Paratransit Association ("PTPA") files this letter response to the Application of Rasier-PA LLC ("Rasier") for Emergency Temporary Authority ("Application for ETA") in the above-captioned matter. In filing this response, PTPA adopts and incorporates the letter response filed by the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") on July 9, 2014.

The PTPA is an organization comprised of numerous Commission certificated taxi and paratransit operators located within the Commonwealth of Pennsylvania, including within Allegheny County. The PTPA is duly authorized to act on behalf of its members with respect to the within matter. The PTPA has directed and authorized the undersigned to file this letterresponse as counsel for the PTPA.<sup>1</sup>

The PTPA respectfully request that the Commission deny Rasier's Application for ETA because it has failed to demonstrate the existence of emergency conditions to warrant the granting of emergency authority, and because Rasier has a history of willful and flagrant violations of the Public Utility Code and Commission regulations.

<sup>&</sup>lt;sup>1</sup> Although Commission regulations do not provide for formal protests to applications for ETA, the Commission has considered information contained in protests as an "aid in the determination of whether immediate need has been shown." Application of Time Enterprises, Inc., for emergency temporary authority, to transport, as 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).

## Background

On July 2, 2014, Raiser filed the above-captioned Application for ETA to operate an experimental ride-sharing network service between points in Allegheny County.<sup>2</sup> Raiser is a wholly-owned subsidiary of Uber Technologies, Inc. ("UTI or "Uber""). Rasier's Application for experimental service proposes to operate a "ride-sharing" network service for passenger trips by connecting passengers to "ride-sharing" operators with whom Applicant intends to contract via digital platform ("the Uber app"). Operators will utilize their personal "noncommercially" licensed vehicles. *See* Application for Experimental Service at Docket No. A-2014- 2416127, ¶¶ 10-11.

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). Commission regulations define an "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 meeting." 52 Pa. Code § 3.1.

The criteria for emergency temporary authority are set forth in Section 3.384 of the Commission's regulations, 52 Pa. Code § 3.384. A grant of ETA shall be 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 normally be found to exist when there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service." 52 Pa. Code § 3.384(b)(2).

## Rasier has not Demonstrated an "Emergency" Necessitating the Granting of ETA

Rasier must demonstrate that an "emergency" exists to justify the granting of its ETA. An "emergency" is "a situation which presents a clear and present danger to life or property." *Application of South Shore Limousine*, *LLC*, Docket No. A-2012-2297115 (Order entered August 2, 2012).

Raiser has not offered any evidence to substantiate a finding that there is a clear and present danger necessitating the granting of its Application. In fact, Rasier has not even alleged the existence of an "emergency" situation.

There is no clear and present danger to life or property to justify the granting of Rasier's ETA. To the contrary, on July 1, 2014, the Bureau of Investigation and Enforcement (I&E") of the Commission obtained 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 authority from the Commission. The presiding Administrative Law Judges found that the request for an emergency cease and

<sup>&</sup>lt;sup>2</sup> Raiser filed an Application for authority to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Allegheny County on April 14, 2014 at Docket No. A-2014-2416127.

desist order is not injurious to the public interest.<sup>3</sup> See 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).

The presiding ALJs at the cease and desist hearing specifically held that "[i]t is therefore not in the public interest to permit Uber to continue to provide the contested service, pending a full and complete hearing..." See July 1, 2014 at 15. Similarly, denial of Rasier's Application for ETA is not harmful to the public.

## Rasier Cannot Demonstrate an Immediate Need for Its Service By Evidence of Uber's Illegal Operations

In support of its request for ETA Rasier presents the testimonials of passengers who received unauthorized service utilizing the digital software of Uber. *See* Application for ETA at 1-2, Exhibit "B" and Supplement to ETA, Exhibit "C".<sup>4</sup> The testimonials offered by Rasier are legally insufficient to demonstrate a public need for its service.

Evidence of unauthorized service to customers cannot, as a matter of law, sustain an applicant's burden of proving need for the service. "It is well settled 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 PUC's regulations or orders." Nat'l Retail Transp. V. Pa. Pub. Util. Comm'n, 530 A2d 987, (Pa. Cmwlth. 1987) citing Manganell v. Pa. Pub. Util. Comm'n, 335 A.2d 890 (Pa. Cmwlth. 1975). "Evidence of illegal activity deliberately rendered by the applicant and related shipper testimony is improper for consideration by the PUC and must be excluded." Id.

That the Rasier and Uber operations are inextricably intertwined cannot be reasonably contested. Raiser is a wholly-owned subsidiary of Uber technologies, Inc. ("UTI or "Uber""). Applicant's experimental service proposes to operate a "ride-sharing" network service for passenger trips by connecting passengers to "ride-sharing" operators with whom Applicant intends to contract via digital platform ("the Uber app"). The president and chief executive officer of Uber is Travis Kalanick. Mr. Kalanick is also the manager an only member of Rasier. *See* Application for ETA,  $\P$  5. In fact, Rasier's Application for ETA is verified by Uber Technologies, Inc.

Uber, and the drivers that it employs, have consistently and deliberately engaged in illegal transportation services, even when ordered to cease and desist its operations. The

<sup>&</sup>lt;sup>3</sup> Significantly, Uber did not offer any evidence at the Cease and Desist hearing.

<sup>&</sup>lt;sup>4</sup> Commission regulations provide that an Application for ETA shall be supported by "statements of the applicant and shippers or other witnesses which establish an immediate need for service. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement." 52 Pa. Code § 3.383(c) (emphasis added). The testimonials attached as Exhibit "B" should not be considered by the Commission because the same are not signed and certified as accurate. In fact, the last names of the individuals allegedly offering the testimonials are not identified.

evidence that Uber and its drivers have engaged in unauthorized transportation includes the following:

- On April 22, 2014, I&E filed non-traffic citations before Pittsburgh Magisterial District Judge Eugene Riccardi 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.
- On June 5, 2014, I&E filed complaints with the Commission against the same eleven (11) Uber drivers for transporting passengers for compensation without holding Certificates of Public Convenience.
- On July 1, 2014, Uber was ordered to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles.
- Despite the cease and desist order, Uber defiantly continues to operate. On July 14, 2014, B&I filed five (5) citations against Uber drivers for operating as a motor carrier without possessing a Certificate of Public Convenience

Rasier, through its parent company, Uber continues to deliberately violate Pennsylvania statutory and regulatory law, and snubs its nose at an order directing it to cease and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles until it secures authority from the Commission. Uber's attempt to establish need through its illegal operations cannot be considered by the Commission as a basis for granting the Application for ETA.

Additionally, the deliberate and flagrant violations as aforesaid cast significant questions about Rasier's fitness, which is a basis for the Commission to deny the Application for ETA under 52 Pa. Code § 3.384(c)(2).

Wherefore, PTPA respectfully request that the Commission deny Rasier's Application for Emergency Temporary Authority.

Respectfully submitted, Pennsylvania Taxi & Paratransit Association

Date: July 21, 2014

By:

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