

Karen O. Moury
717 237 4820
karen.moury@bipc.com

August 4, 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 Rasier-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 Rasier-PA LLC, I have enclosed for electronic filing the Replies of Rasier-PA LLC to the Exceptions of The Insurance Federation of Pennsylvania 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: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-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 :

**REPLY EXCEPTIONS OF RASIER-PA LLC
TO EXCEPTIONS OF INSURANCE FEDERATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Rasier-PA LLC (“Rasier-PA”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files these Reply Exceptions, pursuant to Section 5.535 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.535, and in connection therewith avers as follows:

I. Introduction

The only issue raised by the Exceptions relates to the standing of the Insurance Federation of Pennsylvania, Inc. (“Insurance Federation”) to protest Rasier-PA’s application for approval to operate an experimental ride-sharing network service between points in Allegheny County. Well-established Commission precedent requires a party to hold motor carrier operating authority that is in actual or potential conflict with the authority sought by the applicant in order to have standing to protest the application. Since the Insurance Federation does not have such authority and has not identified a direct, substantial and immediate interest in this proceeding, it lacks the requisite standing to participate in this proceeding and its protest was properly dismissed. Moreover, the issues raised by the Insurance Federation are within the expertise of

the Commission to address during the compliance phase of the proceeding if the application is approved.

II. Background

On April 14, 2014, Rasier-PA 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. Notice of Rasier-PA's application was published in the *Pennsylvania Bulletin* on April 26, 2014. Protests were due by May 12, 2014.

On May 12, 2014, the Insurance Federation filed a timely protest. The Insurance Federation protested Rasier-PA's application on the basis of allegations concerning the ability of Rasier-PA to comply with the Commission's insurance requirements. Rasier-PA filed preliminary objections on June 2, 2014 seeking dismissal of the Insurance Federation's protest on the ground that it lacks standing to participate pursuant to Section 5.101(a)(7) of the Commission's regulations, 52 Pa. Code § 5.101(a)(7).

By Initial Decision served on July 3, 2014, the Administrative Law Judges ("ALJs") sustained Rasier-PA's objections and dismissed the protests due to the lack of standing. Even applying a broader standard of Pennsylvania jurisprudence to the question of standing than is normally followed in motor carrier application proceedings, the ALJs concluded that the Insurance Federation had failed to articulate a specific and immediate injury other than an abstract interest in ensuring that Rasier-PA has acceptable insurance coverage.

The Insurance Federation filed Exceptions on July 23, 2014 arguing that it has the requisite standing to participate in Rasier-PA's application proceeding. Rasier-PA files these

Reply Exceptions urging the Commission to adopt the ALJs' Initial Decision sustaining Rasier-PA's preliminary objections and dismissing the Insurance Federation's protest.

III. Replies to Exceptions

A. Reply to Insurance Federation Exception No. 1: The Initial Decision properly determined that the Insurance Federation failed to demonstrate an interest which is "direct, immediate and substantial."

In finding that the Insurance Federation failed to demonstrate an interest which is "direct, immediate and substantial," the ALJs correctly concluded that the interests set forth in the protest are at best "speculative." I.D. at 7. The Insurance Federation is a non-profit trade association, which represents insurance companies doing business in Pennsylvania in legislative, regulatory and judicial matters. The association claims to have standing to file the protest on the basis its members *may* be harmed if Rasier-PA does not comply with the Commission's insurance requirements.

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 Germantown Cab Company*, Docket No. A-2012-2295131 (Initial Decision served August 23, 2012) (and the cases cited therein) ("*Germantown*"). Consistent with this well-established precedent, as the Insurance Federation does not have operating authority in actual or potential conflict with the authority sought by Rasier-PA, it does not have standing to file this protest.

Even when a broader standard of Pennsylvania jurisprudence is applied to the question of standing than is normally followed in motor carrier application proceedings, the Insurance Federation failed to articulate a specific and immediate injury other than an abstract interest in

ensuring that Rasier-PA has acceptable insurance coverage. A party must have direct, immediate and substantial interest in order to establish standing to protest an application, and that party's standing may not be based on mere conjecture and speculation. *See Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co.*, Docket Nos. A-212285F0046/47 and A-210870F01, Opinion and Order entered July 9, 1998, 1998 Pa. PUC LEXIS 40, citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

The Insurance Federation's protest alleges that its members *could* be subjected to additional costs if Rasier-PA's application is approved. As the ALJs correctly noted, while the Insurance Federation has opinions concerning the adequacy of Rasier-PA's insurance coverage, these speculative claims about possible additional costs do not articulate a specific and immediate injury. For instance, the ALJs observed that the Insurance Federation has not identified a member of its association who has been required to defend or provide coverage to an underinsured individual involved in a personal injury action related to the proposed service. Further, the ALJs correctly concluded that the grant of authority to Rasier-PA will not impose a legal obligation upon the insurance carriers represented by the Insurance Federation to provide any specific coverage or to cover costs. The Insurance Federation's speculative claims about the future potential impact of Rasier-PA's operations on its members do not provide the requisite direct, immediate and substantial interest needed to establish standing to participate in Rasier-PA's application proceeding.

The standing rules are designed to appropriately limit the issues raised in motor carrier applications in the interest of judicial economy. To allow the Insurance Federation's protest on the basis of alleged "exposure" of its members to additional costs runs directly contrary to those principles. The Insurance Federation has acknowledged that its legal obligations are established

through their own policies; as such, they will not be affected or modified by approval of Rasier-PA's application.

Moreover, the Insurance Federation's theoretical concerns regarding insurance have been rendered moot by the Commission's diligent review of insurance matters related to experimental ride-sharing applications. See *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No. A-2014-2429993 (July 24, 2014) ("*ETA Order*"). In the *ETA Order* approving Rasier-PA's application for emergency temporary authority to provide experimental ride-sharing services between points in Allegheny County, the Commission required modifications to Rasier-PA's insurance and mandated the filing of a Form E certifying that Rasier-PA has insurance that meets the Commission's requirements. See also *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*, Docket No. 2014-2410269 (May 22, 2014) (Commission conditionally approved application to provide transportation network services upon submission of acceptable insurance coverage).

For the reasons stated above, the Commission should deny the Insurance Federation's Exception No. 1.

B. Reply to Insurance Federation Exception No. 2: The Initial Decision correctly concluded that the Insurance Federation has not set forth sufficient facts to support its standing to protest the Rasier-PA application.

The ALJs properly found that the Insurance Federation failed to offer facts sufficient to support standing for its protest. I.D. at 7. Allegations regarding potential indirect injury resulting from approval of the application and the expression of opinions about the adequacy of Rasier-PA's insurance coverage are not sufficient to support standing. Given the Commission's diligent review of insurance requirements for ride-sharing network services, as described above, the Insurance Federation's participation in the application proceeding is unnecessary and

unwarranted. For these reasons, the Commission should deny the Insurance Federation's Exception No. 2.

C. Reply to Insurance Federation Exception No. 3: The Initial Decision's dismissal of the Insurance Federation's protest without a hearing was "just, reasonable and in the public interest" and should be adopted by the Commission without modification.

The ALJs properly recognized that the public interest would be best served by dismissing the Insurance Federation's protest. Subjecting motor carrier applications to protest by any entity with an indirect interest runs contrary to longstanding Commission policies and the public interest. *See Germantown, supra*. Moreover, the Insurance Federation's protest and exceptions fail to consider the statements made by Rasier-PA in its application regarding its intent to comply with and exceed the Commission's minimum insurance requirements and also fail to acknowledge the Commission's ability to determine whether Rasier-PA maintains adequate insurance coverage and to withhold a certificate of public convenience until such evidence is submitted. Further, as the Insurance Federation's concerns have been rendered moot by the actions of the Commission, the public interest would not be served by permitting it to protest Rasier-PA's application.

For the reasons noted above, the Commission should deny the Insurance Federation's Exception No. 3.

IV. **Conclusion**

WHEREFORE, for the foregoing reasons, Rasier-PA LLC respectfully requests that the Commission deny the Exceptions of the Insurance Federation of Pennsylvania, Inc. and adopt the Initial Decision issued by Administrative Law Judges Mary D. Long and Jeffrey A. Watson.

Respectfully submitted,

Dated: August 4, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Attorneys for Rasier-PA LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA, LLC, a limited liability company : A-2014-2416127
of the State of Delaware, for the right to begin to transport, :
by motor vehicle persons in the experimental service :
of shared-ride network for passenger trips between points in :
Allegheny County :

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 E-Mail and/or First-Class Mail

Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
malong@pa.gov

Michael S. Henry, Esquire
Michael S. Henry LLC
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@mshenrylaw.com

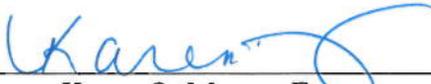
Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
jeffwatson@pa.gov

Samuel R. Marshall
President & CEO
The Insurance Federation of Pennsylvania, Inc.
1600 Market Street, Suite 1720
Philadelphia, PA 19103
smarshall@ifpenn.org

David W. Donley, Esquire
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

Ray F. Middleman, Esquire
Paul S. Guarnieri, Esquire
Malone Middleman, P.C.
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090

Dated this 4th day of August, 2014.



Karen O. Moury, Esq.