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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 Brief of Rasier-PA LLC 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 :

BRIEF ON BEHALF OF RASIER PA LLC

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Dated: September 15, 2014

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I. INTRODUCTION

It is beyond dispute that ridesharing network services fill significant gaps in the transportation infrastructure in Allegheny County. As rider after rider will attest, Allegheny County needs Rasier-PA's proposed service. For example, Ms. Sally J. Guzik testified that the proposed service enabled her to visit a loved one in the hospital before they passed away and to get home safely from work every day:

I began using Uber in the middle of February of 2014. At that time I had a family member that was very ill of terminal cancer and I work a late shift at a restaurant as well as consulting job, and I used that app to secure a ride to and from the hospital during off hours or other forms of peak transportation hours...I'm a frequent pedestrian and also public transit user, have tried using other services as well, either to not have a phone call received or returned or to ever be picked up, and that has been my experience. With the new ride sharing application, I have never had to wait more than 15 minutes.¹

Additionally, Brian Bashin, Chief Executive Officer for Lighthouse for the Blind, testified that for visually impaired individuals:

This is not a discretionary item or just might be nice item. This is something that some of use every day to get to work, to do shopping, to visit our family, that kind of thing. So it is not just something that's superficial. It will be the heart and soul of how blind and visually impaired people get around and how baby boomers who are not going to stay at home will decide on having options later on when they can't drive.²

Mr. Bashin's organization assists visually impaired individuals travel independently, and in the twenty years he has devoted to this cause, he has not seen any one thing so significantly impact that goal as being able to summon a ride "when you want, to show up when you want, to do it so safely and a little cheaper than it has been."³

Indeed, the Commission has recognized the immediate need for ridesharing services in Allegheny County in approving the emergency temporary authority ("ETA") application filed by

¹ N.T. 36-37. *See also* Applicant Exhibit 1, page 1.

² N.T. 165.

³ N.T. 165.

Rasier-PA LLC (“Rasier-PA”) by Order adopted on July 24, 2014. *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, Pennsylvania*, Docket No. A-2014-2429993 (July 24, 2014) (“*ETA Order*”). In the *ETA Order*, the Commission stated that “there is an immediate need for the experimental service” proposed by Rasier-PA, noting that the verified supporting statements submitted with the application demonstrated “the inadequacy of existing transportation services in Allegheny County.”⁴ Further, the Commission found “that the introduction of the new App-based transportation service in Allegheny County will provide consumers with another competitive alternative to traditional call and demand service that can provide a wider ranging, faster and more user-friendly scheduling of transportation services.”⁵

Among the benefits that have been identified by Rasier-PA when ridesharing enters new markets include declines in DUI rates and wait times for rides, especially in ignored and underserved neighborhoods. Importantly, the availability of ridesharing gives the consumer a choice in the way they arrange their transportation and enables them to opt for a safe and easy cashless transaction that provides a quick and reliable estimated arrival time and after the completion of the ride solicits the rider’s feedback about the quality of the vehicle and the service provided by the operator.⁶

Based upon the critical need for the ridesharing services proposed by Rasier-PA, coupled with Rasier-PA’s evidence related to driver integrity, vehicle safety and liability insurance, the Commission should approve the pending application so that these services can continue on an experimental basis for a period of up to two years. Approval of this application will fill the

⁴ *ETA Order* at 13.

⁵ *ETA Order* at 13.

⁶ N.T. 66-67, 70 and 74.

transportation void in Allegheny County and ensure that the benefits of ridesharing services continue to be available to the riding public. Approval will also allow existing operators to continue and new operators to start and expand their small businesses, thereby contributing to economic growth in Allegheny County.

II. STATEMENT OF THE CASE

A. Procedural History

On April 14, 2014, Rasier-PA filed an application for a certificate of public convenience to operate an experimental ride-sharing network service between points in Allegheny County in the Commonwealth of Pennsylvania. Rasier-PA is a limited liability company (“LLC”) organized under the laws of Delaware and registered as a foreign limited liability company in Pennsylvania. It is a wholly owned subsidiary of Uber Technologies, Inc. (“UTI”). The manager of Rasier-PA is Travis Kalanick, and there are no other members of the LLC.⁷

The application was published in the *Pennsylvania Bulletin* on April 26, 2014. Timely protests were filed by JB Taxi LLC t/a County Taxi Cab (“JB Taxi”); Concord Limousine, Inc. (“Concord Limousine”); Executive Transportation, Inc., t/a Luxury Sedan (“Executive Transportation”); the Insurance Federation of Pennsylvania, Inc. (“Insurance Federation”); and the Pennsylvania Association for Justice (“PAJ”) (also collectively referred to as “Protestants”). Rasier-PA filed preliminary objections challenging the standing of the Protestants to participate in this proceeding, on the basis that they are not existing carriers holding experimental authority to provide ridesharing services.

⁷ N.T. 53.

By Interim Orders dated July 1, 2014, the preliminary objections to dismiss the protests of Concord Limousine and Executive Transportation were dismissed.⁸ By Initial Decisions issued on July 3, 2014, the protests of JB Taxi, the Insurance Federation and PAJ were dismissed. Following the filing of Exceptions by JB Taxi and the Insurance Federation, and the filing of Reply Exceptions by Rasier-PA to the Initial Decisions, the Commission reversed the Initial Decisions and granted the Exceptions of JB Taxi and the Insurance Federation by Order entered on August 15, 2014 and ratified on August 21, 2014.

The parties to this proceeding include Rasier-PA, Executive Transportation, Concord Limousine, JB Taxi and the Insurance Federation. Evidentiary hearings were held on August 18-19, 2014 and September 9, 2014. At the hearings, Rasier-PA presented the testimony of Matthew Gore, Henry Gustav Fuldner, Brian Bashin, Sally J. Guzik, Rebecca Gonzalez-Bartoli, and Lori Sergent.

Mr. Gore is employed by UTI and is currently General Manager-Uber Florida.⁹ His immediate prior position was Associate General Manager-Uber Pittsburgh.¹⁰ As Associate General Manager-Uber Pittsburgh, Mr. Gore's responsibilities were to develop and grow the business, which included establishing and maintaining the quality of the service supplied to the public and evaluating business opportunities for expansion.¹¹ He also monitored markets and reviewed studies to understand the benefits of ridesharing services, what makes the public want to use these services, and how the public responds when ridesharing providers enter a market.¹²

⁸ Rasier-PA filed a Petition for Interlocutory Review on July 11, 2014 at Docket No. P-2014-2431743, seeking review and answer of material question so that the protests of Concord Limousine and Executive Transportation would be dismissed. By Order adopted on July 24, 2014, the Commission denied the Petition for Interlocutory Review.

⁹ N.T. 49.

¹⁰ N.T. 50.

¹¹ N.T. 50.

¹² N.T. 51-52.

He received his Bachelors of Science and Engineering from the University of Illinois and a Master's in Business Administration from the University of Chicago Booth School of Business.¹³ After graduating from the University of Illinois, Mr. Gore was commissioned as an officer in the United States Navy, where he spent five years as a nuclear submarine officer.¹⁴ He also worked as a management consultant for the Boston Consulting Group prior to joining UTI.¹⁵

Mr. Fuldner is UTI's Director of Insurance and Risk Management.¹⁶ He is responsible for the procurement of insurance for the benefit of the company and its risk management needs, including insurance maintained on behalf of operators.¹⁷ These responsibilities include the purchase of insurance in all areas where UTI subsidiaries operate, including Pennsylvania. Specifically, he negotiated through a licensed surplus lines broker with the James River Insurance Company and other carriers to develop policies specifically designed to fit the needs of the ridesharing business model.¹⁸ Mr. Fuldner received his Bachelors of Science in Economics and Computer Science from Yale College and a Master's in Business Administration from the Stanford Graduate School of Business. He also holds a chartered financial analyst ("CFA") designation from the CFA Institute.¹⁹ Prior to joining UTI, Mr. Fuldner was a venture capitalist and vice president at Benchmark Capital, one of UTI's initial investors, and he worked at McKinsey & Company based in New York City and Hong Kong, where he worked on innovation and financial services matters with a focus on insurance and banking. He began his

¹³ N.T. 49-50.

¹⁴ N.T. 50.

¹⁵ N.T. 50.

¹⁶ N.T. 511.

¹⁷ N.T. 511.

¹⁸ N.T. 512.

¹⁹ N.T. 511.

professional career as a part of the founding team of a company that provided financial services to the higher education market.²⁰

Mr. Bashin is the Chief Executive Officer for Lighthouse for the Blind (“Lighthouse”), based in San Francisco. The purpose of Lighthouse is to assist visually impaired individuals achieve their best lives in terms of work or independence.²¹ Ms. Guzik, Ms. Gonzalez-Bartoli, and Ms. Sergent are residents of Pennsylvania and are users or potential users of ridesharing services.²²

B. Description of Proposed Service

By the application, which was filed pursuant to Section 29.352 of the Commission’s regulations, 52 Pa. Code § 29.352, Rasier-PA requests authority to utilize a digital platform to connect passengers to independent ridesharing operators (“operators”) using their personal vehicles.²³ Rasier-PA has an agreement with UTI to use the technology, and specifically the UberX product which is also often described as the “low cost option.”²⁴ For purposes of this proceeding, Rasier-PA uses the term “ridesharing” to describe the proposed service. It has also been called transportation network services. The experimental authority granted by the Commission’s ETA Order involves the same service.²⁵

Under Rasier-PA’s proposal and the ridesharing services that are currently provided pursuant to the ETA Order, Rasier-PA licenses technology that was created and is owned by UTI to generate leads from riders and contracts with operators who use their personal vehicles to

²⁰ N.T. 511.

²¹ N.T. 160-161.

²² N.T. 34-38 and 178-184.

²³ Rasier-PA does not propose to transport passengers, employ operators or own vehicles. N.T. 56, 57-58.

²⁴ N.T. 71-74, 85. For instance, there was some discussion at the hearings about a product called “Uber Black,” which is offered in other jurisdictions, including the City and County of Philadelphia, and involves the use of commercially licensed vehicles and operators. N.T. 72-73.

²⁵ See *ETA Order*.

provide ridesharing services.²⁶ When operators partner with Rasier-PA, they are furnished a smartphone that is preloaded with a mobile application, which is the technology Rasier-PA licenses from UTI, allowing the operators to receive and accept ride requests.²⁷ The operators receive the gross fare, less twenty percent that is paid to cover fees, including the licensing of the technology.²⁸

Riders request transportation through the Internet or a mobile application (“App”) on their smartphones or tablets.²⁹ Riders are required to create a user account and supply a valid credit card or bank account number.³⁰ To use the App on their smartphones or tablets, riders must download the App.³¹ When riders want to request a ride, they open the App and see a map that resembles Google Maps with a pin that they can move to their current location or to the location they want to use for the originating point of the ride.³² To request a ride through the App, the rider clicks “request a ride” and then confirms that he or she would like a ride originating at the location selected on the App.³³

Prior to requesting a ride, riders are able to view the applicable rates being charged. Riders also have the option entering their destination and requesting an estimated fare before booking a ride.³⁴ Rasier-PA proposes to use a tariff similar to what was filed with the Commission in connection with the *ETA Order*.³⁵ Under that tariff, the rate may be calculated on the basis of time and distance, will have a base fare, may include a flat rate for certain trips, and may increase or decrease as necessary to match supply and demand. The latter reference is

²⁶ N.T. 57.

²⁷ N.T. 57.

²⁸ N.T. 200.

²⁹ N.T. 55.

³⁰ N.T. 55, 480-481.

³¹ N.T. 55.

³² N.T. 57, 476.

³³ N.T. 57, 476.

³⁴ N.T. 80.

³⁵ Applicant Exhibit 3; N.T.80.

to “dynamic” or “surge” pricing, which is disclosed in advance to riders, who must then confirm that they still want to request a ride.³⁶ Additionally, cancellation and cleaning fees may be assessed with advance notice to the customer.³⁷

Upon the rider requesting a ride, the closest operator who has signaled as being available to provide transportation is pinged.³⁸ If the operator accepts the request, he or she receives the user’s location and proceeds to pick up the rider.³⁹ If the operator does not accept the request, it automatically goes to the next closest available operator.⁴⁰

When an operator accepts a request, the rider receives the vehicle type and license number, a photo of the operator, an indication of the operator’s current location and estimated time of arrival. The rider is also able to watch the location of the operator’s vehicle on the App while the operator is en route to the rider’s location.⁴¹ Operators are not permitted to solicit or accept street hails.⁴²

Upon completion of the trip, no cash exchanges hands since the rider’s payment information is already on file.⁴³ The customer simply exits the vehicle, and an electronic receipt is transmitted to the passenger’s email address or App documenting the details of the trip.⁴⁴ The receipt contains information for the passenger to contact the Commission if he or she has a complaint about the service that was provided.⁴⁵

³⁶ N.T. 476.

³⁷ N.T. 80.

³⁸ N.T. 56.

³⁹ N.T. 56.

⁴⁰ N.T. 229.

⁴¹ N.T. 58.

⁴² N.T. 58.

⁴³ N.T. 55, 480-481.

⁴⁴ N.T. 56.

⁴⁵ N.T. 129.

Affiliates of Rasier-PA offer ridesharing services in over 160 cities and over 45 countries around the world.⁴⁶ Innovation and technology have enabled Rasier-PA to offer affordable safe transportation options to riders on demand and Rasier-PA's services meet a void that has not been met by existing taxicab and limousine companies operating in Pittsburgh.

III. SUMMARY OF ARGUMENT

Under the clear language of the Public Utility Code and well-established case law, the two questions that need to be addressed by the Commission in adjudicating this application are:

- 1) Will the proposed service fulfill some public purpose, or be responsive to a public need or demand?
- 2) Is Rasier-PA fit to provide the proposed service?

Unequivocally, the answer to both questions is yes. The use of an App-based technology that connects passengers with drivers using their own vehicles is revolutionizing the transportation market. Rides can be scheduled on demand and in a more reliable way than traditional transportation services. The Commission should approve the application for experimental authority to allow this new and innovative service to deliver needed alternatives to the riding public for safe, reliable and affordable travel in Allegheny County.

A. Ridesharing network services have significantly improved Allegheny County's transportation infrastructure.

It is beyond dispute that ridesharing network services fill significant gaps in the existing transportation infrastructure. Ridesharing provides compelling societal benefits that are responsive to public demand and have the ability to provide needed transportation options in traditionally underserved neighborhoods. In addition to the conveniences inherent in Rasier-PA's ridesharing model, including the safe cashless transactions and the ease of using the App, the

⁴⁶ N.T. 58.

overall benefits of ridesharing include reductions in wait times, declines in DUI rates and reduction of overall motor vehicle pollution. For individuals who are blind or visually impaired, the availability of ridesharing is life-changing in that it enhances their independence due to the ease with which they can access and pay for a ride. By contracting with operators who live in diverse communities and come from all walks of life, Rasier-PA is able to offer more options to the riding public to find a ride whenever it is needed.

Through an industry-leading robust vetting process of operators designed to enhance the safety of the riding public, Rasier-PA automatically disqualifies individuals who have been convicted within the past 7 years for crimes of violence, sexual abuse, felony robber or felony fraud or are in the National Sex Offender Registry database. Additionally, operators with poor driving histories, including convictions within the past 7 years for aggravated reckless driving or driving under the influence, are automatically disqualified. Likewise, Rasier-PA requires vehicles to have passed Pennsylvania equipment inspections and goes beyond that to ensure that the vehicles are of a quality that is acceptable to riders. Rasier-PA further relies on a rating and customer feedback system that holds operators accountable and provides incentives to ensure that their driving and vehicles meet the high standards of the riders.

Rasier-PA provides primary liability insurance coverage from the time the App is on and the operator has logged into the system until the completion of transportation services. This coverage protects the public in the event of bodily injury or property damage arising from transportation services provided by an operator and arranged through the App.

While the Protestants have attacked various elements of the proposed service, these efforts are nothing more than an attempt to limit competition to their existing businesses at the expense of the general public which has demanded this new and innovative product. As the

Commission knows from regulating other industries, competition is at the heart of innovation and expands product offerings. Importantly, competition promotes customer choice and economic growth. If the Commission allows existing carriers to derail this application on the basis of any of the red herrings that are raised, it is the riding public who will lose.

B. Rasier-PA is clearly fit to provide the proposed services.

Rasier-PA has demonstrated that it is fit to provide the proposed service, noting that affiliates have experience providing similar service in other jurisdictions and that affiliates currently hold authority in Pennsylvania, which presumes fitness. Moreover, the record is replete with references to Rasier-PA's propensity to operate legally and safely, including:

- Obtaining a brokerage license in response to concerns raised by Commission staff about ridesharing services
- Filing the pending application and the ETA application when advised by Commission staff that the brokerage license would not cover these operations
- Implementing robust driver integrity requirements and automatically disqualifying individuals who would pose a threat to the safety of the riding public
- Requiring vehicles to meet or exceed Pennsylvania inspection standards
- Removing vehicles that are more than 8 years old and have more than 100,000 miles on the odometer from the platform in compliance with the *ETA Order*
- Complying with the *ETA Order* to use trade dress to mark the vehicles so that Commission enforcement officers can identify them
- Relying on rider feedback to ensure accountability of drivers as to safe driving and the condition of vehicles
- Maintaining "best in class" \$1 million of liability insurance coverage during a trip since before entering Pennsylvania to protect passengers
- Modifying liability insurance coverage to be compliant with the *ETA Order*
- Revising its receipt to include Commission contact information for consumers to submit complaints about the service

Based upon the immediate need for the ridesharing services proposed by Rasier-PA, coupled with Rasier-PA's evidence related to driver integrity, vehicle safety and liability insurance, the Commission should approve the pending application so that these services can continue on an experimental basis for a period of up to two years. Approval of this application will fill the transportation void in Allegheny County and ensure that the benefits of ridesharing services continue to be available to the riding public. Approval will also allow existing operators to continue and new operators to start and expand their small businesses, thereby contributing to economic growth in Allegheny County.

IV. ARGUMENT

A. Pennsylvanians In Allegheny County Have Overwhelmingly Demanded Ridesharing Services And Rasier-PA Has Demonstrated That It Is Qualified To Offer These Services And That It Is Committed To Driver Integrity and Rider Safety

1. General Legal Standards.

Section 1103(a) of the Public Utility Code provides that a certificate of public convenience shall be granted if the Commission determines that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a). The Commonwealth Court has interpreted the statutory mandate as requiring an applicant to demonstrate that its proposed service will fulfill some useful public purpose, be responsive to a public need or demand, and that it is fit to provide the proposed service. *Purolator Courier Corp. v. Pennsylvania Public Utility Commission*, 51 Pa. Cmwlth. 377, 414 A.2d 450 (1980). Stated differently, the relevant inquiry in a motor carrier application is the present need expressed by the traveling public and the fitness of the applicant to meet that need. *Byerly v. Pennsylvania Public Utility Commission*, 440 Pa. 521, 270 A.2d 186 (1970); *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Cmwlth. 1, 37 A.2d 972 (1975).

2. *Public Need or Demand.*

What constitutes public need for service depends on the locality, the type of service and the particular circumstances of each case. *Warminster Township Municipal Authority v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). The Commission has said that the burden of demonstrating a need for a proposed service is “met by showing the proposed service is reasonably necessary for the accommodation or convenience of the public. Absolute need is not a requisite. It is not necessary that need or exist at every point in the proposed territory.” *Application of Kenneth Scott Cobb t/a Kenny’s Cab*, Docket No. A-00123917 (2009). It is sufficient to show that on the record as a whole, the proposed service is reasonably necessary or that the necessity exists within the area generally served.” *Seaboard Tank Lines, Inc. v. Pa PUC*, 502 A.2d 762 (Pa. Cmwlth. 1985).

An applicant for motor carrier authority may prove a need or demand for its proposed service through witnesses comprising a representative sampling of the public that will use the proposed service. *In Re: Blue Bird Coach Lines, Inc.*, 72 Pa. PUC 262 (1990) (“*Blue Bird*”). The particular circumstances of each case will determine what constitutes sufficient evidence of public demand/need for an applicant’s proposed service. The number of witnesses, which will comprise a cross section of the public on the issue of public demand/need for an applicant’s proposed service, will necessarily vary with the circumstances of each case. *Id.*, at 274-275. In *Application of Krise Transport, Inc.*, Docket No. A-00109607 (September 22, 1995), the Commission indicated that the testimony of supporting witnesses searching for more choice in their transportation options could be accepted as evidence of public need for a proposed service.

The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established by protestants that the entry of a new carrier

into the field “would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.” 52 Pa. Code § 41.14(c). Through these criteria, the Commission seeks “to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *Blue Bird, supra* at 274.

3. *Fitness of Applicant.*

The factors that are examined to determine an applicant’s fitness to provide the proposed service are set forth in the Commission’s policy statement at 52 Pa. Code § 41.14(b). When applicable, these criteria include sufficient capital, equipment, facilities or other resources; sufficient technical expertise and experience; ability to secure sufficient and continuous insurance coverage; plans to comply with the Commission’s driver and vehicle safety regulations and service standards; and the applicant’s record of compliance with the Code and the Commission’s orders. *Id.* In determining fitness, the Commission has consistently applied a three-part test to determine fitness: (1) that an applicant has sufficient technical and operating knowledge, staff and facilities to provide the proposed service; (2) that an applicant have sufficient financial ability to provide safe and reliable service; and (3) that an applicant exhibit a propensity to operate safely and legally. *Re Perry Hassman*, 55 Pa. P.U.C. 661, 662-663 (1982).

While this evidentiary criteria is generally applicable to transportation applications, applying some of the specific elements to the proposed service is often akin to putting a square peg in a round hole. For instance, the evidentiary criteria provide that the Commission will ordinarily examine “[w]hether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. Code § 41.14 (b)(1). However,

since under Rasier-PA's business model, it will not own vehicles, this factor is of no, or limited, value in reviewing the application.

4. *Experimental Service Criteria.*

Also relevant to the adjudication of this application is Section 29.352 of the Commission's regulations, which provide that "[i]n order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate of an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service." 52 Pa. Code § 29.352. Certificates for experimental service are valid for two years, unless the Commission acts prior to that time to amend the regulations to provide for the new class of service. *Id.*

In the Commission's first order granting an applicant experimental authority to offer ride-sharing network services, also referred to as transportation network services, it found that the proposed services do not squarely fit within the specified categories under the existing regulations, including scheduled route service, call or demand service, group and party service, limousine service, airport transfer service, and paratransit service. 52 Pa. Code §§ 29.301-29.356. *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (Order adopted May 22, 2014) ("*Yellow Cab Order*"). Noting that each of those types of passenger services has unique characteristics that define the particular transportation model, the Commission found that it was necessary and appropriate to use the experimental service classification to accommodate transportation network services. *Id.* at 6.

The Commission suggested that the main feature distinguishing the proposed experimental service from existing passenger services is the use of an "App-based technology to arrange the motor carrier passenger transportation service so as to allow for a wider ranging,

faster and more user friendly scheduling of transportation services.” *Id.* at 6. The Commission also acknowledged that other business models for transportation network services may be submitted for review and approval. Recognizing that models may vary, the Commission emphasized the importance of driver integrity, vehicle safety, and proper insurance coverage. *Id.* at 7.

The proposed service is clearly a classic example of a situation where technology has gotten ahead of regulations. The Commission properly observed in the Yellow Cab Order that:

We are cognizant that in this era of rapid development of technological advances, the traditional regulatory framework may not fit neatly the potential transportation changes effected by those developments...Moreover, it is incumbent upon the Commission to ensure that the regulatory structure is not a barrier to desirable changes in the transportation industry advanced by changes in technology.

Id. at 6.

Technological advancements pave the way for consumers to gain access to better services and products. When an existing regulatory framework fails to accommodate a new product or service that revolutionizes the way that the riding public accesses transportation, and prevents the underlying entrepreneurs who developed the game-changing technology to make it available to consumers, it is a disservice to the public interest. The record establishes that Pennsylvanians in Allegheny County need and want the services proposed by Rasier-PA. Moreover, Rasier-PA has already fulfilled the Commission’s directives regarding driver integrity, vehicle safety and adequate liability insurance.⁴⁷ The Commission should grant Rasier-PA an experimental license so that consumers are not deprived of the safe, affordable and reliable transportation alternatives they are demanding.

⁴⁷ Pending legislation similarly focuses on these important elements. *See* S.B. 1457; H.B. 2446; H.B. 2445; H.B. 2453; and 2468.

B. Rasier-PA Has Clearly Established That The Proposed Service Is Responsive To A Critical Public Need.

Ridesharing network services fill significant gaps in the transportation infrastructure in Allegheny County. As rider after rider will attest, Allegheny County needs Rasier-PA's proposed service. In granting emergency temporary authority ("ETA") to Rasier-PA, the Commission concluded that there is an immediate need for the proposed experimental service due to the inadequacy of existing transportation services in Allegheny County. *ETA Order* at 13. The Commission also recognized that the introduction of a new App-based transportation service provides consumers with another competitive alternative to traditional call and demand service. *Id.*

1. Evidence of Need.

The Commission should listen to its fellow citizens. Testifying in support of Rasier-PA's pending application, Ms. Sally J. Guzik testified that the proposed service enabled her to visit a loved one before they passed away and to get home safely from work every day:

I began using Uber in the middle of February of 2014. At that time I had a family member that was very ill of terminal cancer and I work a late shift at a restaurant as well as consulting job, and I used that app to secure a ride to and from the hospital during off hours or other forms of peak transportation hours...I'm a frequent pedestrian and also public transit user, have tried using other services as well, either to not have a phone call received or returned or to ever be picked up, and that has been my experience. With the new ride sharing application, I have never had to wait more than 15 minutes.⁴⁸

Other riders who supported the ETA application shared similar stories, which are included below.

Michael P., Pittsburgh – 15213

I use the service every day to get to work and on weekends to get to parts of town that are otherwise a nightmare. Pittsburgh's cab infrastructure is a joke and the

⁴⁸ N.T. 36-37. See also Applicant Exhibit 1, ETA Application, page 1.

buses run on some arbitrary non-schedule and the t lines are very limited and are completely, unsafely packed during peak times. Uber and lyft were godsend to this city.

Not only day to day but absolutely I've called upon Uber to help my friends and myself out of otherwise potentially dangerous situations, late at night and very early morning. Uber provides a valuable and much needed service to the people of this city. I really hope this can be resolved and the service can continue, as much for the folks that need it as well as for the jobs and much needed income it has provided for the drivers.⁴⁹

Alex Matthew, Pittsburgh – 15222

I have very poor vision (legally blind) and use Uber to help get around Pittsburgh quickly and effectively. What used to take me hours by bus or cab now no never takes over 15 minutes. Having Uber around is crucial to helping me do my job and live my life more easily. Please reconsider the cease and desist order.⁵⁰

Stephanie Mitchell, Pittsburgh – 15203

We need uber in Pittsburgh because I use it as a major form of transportation. Cabs have always been too expensive and unreliable. When I get an uber I always feel safe, it's always reasonably priced, and the uber drivers are nice people just looking for some extra cash to pay for school or help out their families. I use it to go to the bars and to get around town in general. I would be devastated if you took uber away. I use all the time I NEED uber I'm not sure what I'll do without it. Please let uber stay. If uber goes you are getting rid of jobs for innocent working class people forcing us to use cabs if we stay out past the time when public transportation stops running.⁵¹

Tanya Kalinsky, Pittsburgh – 15211

I have lived the city of Pittsburgh for a number of years and do not own a vehicle, but I honestly would not drive to work even if I could since parking is such a nightmare in the city. I work in the service industry, and since most of my jobs require late nights, I rely on public transportation quite frequently. I have always had trouble with the Yellow Cab system (as well as Classy Cab) – drivers not showing up when I'm told they've arrived at my location (a FEW times in one night), waiting for over an hour for anyone to even pick up my request, etc. I have had such bad experiences that I've been forced to wait overnight until the buses start running again until I could get home.

⁴⁹ Applicant Exhibit 1, ETA Application, page 1.

⁵⁰ Applicant Exhibit 1, ETA Application, Exhibit C.

⁵¹ Applicant Exhibit 1, ETA Application, Exhibit C.

Since the arrival of the Uber System in the city, my life has been SO MUCH easier. I use the app almost daily, and most certainly weekly for everything from shopping to going to the doctors, and especially to and from work (I was injured a few months ago and not having to walk and wait on a number of buses or to try to wait for an unreliable Yellow Cab to get places has been incredibly helpful.) I also greatly enjoy the features of the app – pics and car types of the drivers, being able to rate them, being able to track how far away they are, being able to contact them if there are any issues, as well as not having to worry about cash for payment (even though Yellow Cab has credit card swipers, the frequency of which they work is very low). I LOVE Uber and cannot imagine going back to not having the option of using the system. PLEASE !!!⁵²

Fahad Alharbi, Pittsburgh – 15232

In the end of October 2013, I injured my knee badly playing soccer. I needed surgery which meant many hospital visits and more than 6 months of physical therapy. I have missed so many doctor's appointment, PT appointments, and got stuck in the hospital for hours because of cabs not showing up. I was also forced multiple times to walk back home from PT when it was snowing and I was wearing a brace and using crutches because I could not get a cab. I was so relieved when Uber launched in Pittsburgh because all these issues were solved and I have not called a cab ever since.⁵³

Kavita Seth, Pittsburgh – 15221

Uber is one of the most reliable services I have used. The Yellow Cab experience has been horrible I have been up to two hours late to work having no way to get there. I would like to keep Uber available to people like me and others who need a reliable service to get around town and far places. I need Uber!⁵⁴

Vineet Goel, Pittsburgh – 15217

Bad weather, lack of punctuality of the Port Authority bus system and Yellow Cabs showing up only when the designation was the Airport, was something we were al used to. This made Pittsburgh a boring place for all of us who didn't have a car. We could not go anywhere for dinner, drinks or anything fun, if the place wasn't within a 2 mile radius. Uber changed that. Please don't make life in Pittsburgh boring again.⁵⁵

⁵² Applicant Exhibit 1, ETA Application, Exhibit C.

⁵³ Applicant Exhibit 1, ETA Application, Exhibit C.

⁵⁴ Applicant Exhibit 1, ETA Application, Exhibit C.

⁵⁵ Applicant Exhibit 1, ETA Application, Exhibit C.

Anthony McManus, Pittsburgh – 15233

I do not own a car, and because I have short windows sometimes to get to and from my job in Oakland and other neighborhoods, I have come to rely on Uber and use the service almost everyday. It's impossible to do this with the other taxi services, as they are unreliable and certainly less affordable. I can say absolutely that not having this great service will affect my life in a very negative way.⁵⁶

In addition to these specific examples of need from riders, the Mayor of Pittsburgh, William Peduto, has been publicly supportive of the service proposed by Rasier-PA, urging the Commission to permit innovative ridesharing services to fill the void that has not been met by existing taxicab and limousine companies operating in Pittsburgh.⁵⁷ As a rider himself, Mayor Peduto has indicated how pleased he has been with both the level of service and the comfort and safety he has enjoyed. He also has noted the importance of attracting businesses and customers to Pittsburgh and highlighted the role that these services play in economic growth.⁵⁸

Mr. Gore also provided direct testimony on need, noting that Rasier-PA receives multiple requests hourly for ridesharing in Allegheny County. As additional evidence of need, he pointed to the number of taxis per 1,000 people in Pittsburgh, which is less than two, compared to ten taxis per 1,000 people in Washington, D.C.⁵⁹ He further indicated that the experience of Rasier-PA affiliates, when launching a new service, has been consistently one of overwhelming and instant demand and use.⁶⁰ Referring to those successes, he unequivocally stated his expectation that ridesharing would continue to thrive in Allegheny County.⁶¹

⁵⁶ Applicant Exhibit 1, ETA Application, Exhibit C.

⁵⁷ ETA Application, ¶ 17.

⁵⁸ Applicant Exhibit 1, ETA Application, Exhibit A.

⁵⁹ N.T. 75-76.

⁶⁰ N.T. 66.

⁶¹ N.T. 78.

2. *Evidence of Compelling Societal Benefits Responsive to Public Demand.*

Further, evidence was introduced about the compelling societal benefits of ridesharing that are clearly responsive to public demand. For instance, Brian Bashin, Chief Executive Officer for Lighthouse for the Blind, offered testimony describing the benefits of the proposed service for blind and visually impaired individuals:

This is not a discretionary item or just might be nice item. This is something that some of use every day to get to work, to do shopping, to visit our family, that kind of thing. So it is not just something that's superficial. It will be the heart and soul of how blind and visually impaired people get around and how baby boomers who are not going to stay at home will decide on having options later on when they can't drive.⁶²

As a blind person himself, Mr. Bashin testified that he has used taxis "before there was a Uber" and noted that he "can't just look across the street and hail them."⁶³ He said that he especially appreciates the accountability and recordkeeping for his own safety.⁶⁴ Noting that the App is completely accessible to blind and visually impaired individuals, Mr. Bashin also explained how he can text the driver and say, "Look for me. I'm the guy with the long white cane. I can't see you, so you're going to have to honk or pull up to the curb."⁶⁵

Mr. Bashin further testified about the convenience of the payment method, since he does not have to "give the driver a twenty and hope I get the right change," explaining that "[i]t's all there and accounted for. It tells you exactly what is there and again a record."⁶⁶ He noted that using a credit card at the time of the ride is likewise challenging for a blind person.⁶⁷ Mr. Bashin also touted the ratings system that is used so that riders can offer feedback about the drivers and

⁶² N.T. 165.

⁶³ N.T. 162.

⁶⁴ N.T. 162.

⁶⁵ N.T. 163.

⁶⁶ N.T. 164.

⁶⁷ N.T. 170.

the vehicles.⁶⁸ Mr. Bashin's organization assists visually impaired individuals travel independently, and in his twenty years devoted to that cause, he has not seen any one thing so significantly impact that goal as being able to summon a ride "when you want, to show up when you want, to do it so safely and a little cheaper than it has been."⁶⁹ As Mr. Bashin testified, "[o]ptions are great."⁷⁰

Mr. Gore also described benefits of ridesharing that are responsive to public need or demand by providing a safe, reliable and affordable transportation option. For instance, Mr. Gore noted that riders do not need to go outside or look up contact information to get a ride, but that using the App is "literally as simple as pressing a button."⁷¹ Referring to the overall benefits to riders arising from the proposed service, he testified that:

They have the added comfort of knowing who is coming; they know when that car will be there. They know that there's going to be an electronic record of their transaction of their trip. They know that they're not required to carry cash. They know that their credit card will be accepted. They know that there's a feedback system that allows for any sort of complaint to be processed in a way that is going to satisfy them. They know that if they lose an item in the vehicle, that we can instantly track that down. They know that they've got an alternative option instead of drinking and driving or instead of walking when no other transportation is available, and it's just another choice, so they know that they get to choose and not have a single transportation option chosen for them.⁷²

Mr. Gore also testified how the entry of ridesharing into a new market reduces wait times for a ride especially in underserved neighborhoods. Referring to a study conducted in Boston, where wait times were previously over twenty minutes for over a third of the riders, the introduction of ridesharing resulted in 96 percent of the ride requests being fulfilled within

⁶⁸ N.T. 164.

⁶⁹ N.T. 165.

⁷⁰ N.T. 170.

⁷¹ N.T. 66.

⁷² N.T. 67.

twenty minutes, with a median wait time of three-and-a-half minutes.⁷³ He further shared his own personal experience in Washington, D.C., noting that prior to the introduction of ridesharing services, he was often unable to get a taxicab or had to wait a very long time. He estimated that now he never has to wait longer than ten minutes.⁷⁴

Another benefit of ridesharing touted by Mr. Gore is its effect on driving under the influence (“DUI”) rates. Specifically, he testified that DUI rates decline in markets when ridesharing becomes available.⁷⁵ He cited one study showing that DUI rates fell as much as ten percent when ridesharing entered the market in Seattle.⁷⁶ Additionally, he noted that in Pittsburgh, “ride requests spiked enormously at the times that bars are closing.”⁷⁷

Mr. Gore further testified that in more established markets, ridesharing operators driving forty hours per week have median earnings of over \$95,000 per year in New York City and nearly \$75,000 per year in San Francisco.⁷⁸ This evidence demonstrates that if ridesharing is made available, the public will use it. It also shows how ridesharing creates economic opportunities for drivers in local communities.

Through the testimony that was presented at the evidentiary hearing, Rasier-PA has demonstrated a public need and demand for the proposed service, which has been recognized by the Commission in granting ETA to Rasier-PA. Riders have spoken loud and often, explaining how much they depend on ridesharing services to get wherever they need to go within Allegheny County, including work, doctor’s appointments and to visit dying relatives in the hospital. Besides the riders’ individual stories of need for the proposed service and the needs of the public

⁷³ N.T. 70.

⁷⁴ N.T. 70.

⁷⁵ N.T. 75.

⁷⁶ N.T. 75.

⁷⁷ NT. 75.

⁷⁸ N.T. 75.

that Rasier-PA identifies through the monitoring of potential new markets, Mr. Bashin's testimony demonstrated the valuable benefits of ridesharing in enabling blind and visually impaired individuals gain independence in terms of their transportation options. Further, Mr. Gore's testimony highlighted compelling societal benefits of ridesharing, including its effects on service to underserved neighborhoods and DUI rates.

3. Adverse Effect on Existing Operations.

By contrast, the Protestants offered no testimony about the potential effect of the proposed service on their operations, if any, in Allegheny County. Specifically, they presented no evidence to suggest that the entry of Rasier-PA "would endanger or impair" their operations, let alone "to an extent that, on balance, the granting of authority would be contrary to the public interest." 52 Pa. Code § 41.14(c). In fact, the overriding need for the services proposed by Rasier-PA in Allegheny County far outweighs any potential effect of this new service on the operations of existing providers. Further, Mr. Gore testified that the availability of ridesharing frequently grows the base of riders rather than replaces the services provided by traditional transportation. He referred specifically to an example in Chicago where overall trips have increased compared to what taxis were doing before the entry of ridesharing.⁷⁹

Mr. Gore described several differences between ridesharing and call and demand service. Noting that it is more than the manner of hail, he explained that personal vehicles are used and the rider has an account with a valid credit card, along with a user rating if he or she has used the App before.⁸⁰ Also, seasonal and part-time operators are available to provide rides to people in their community,⁸¹ and the platform is designed to increase reliability by providing incentives to

⁷⁹ N.T. 67.

⁸⁰ N.T. 216.

⁸¹ N.T. 67, 543.

accept ride requests.⁸² Further, Mr. Gore testified that the rider knows who is coming, what type of vehicle the operator will be driving and when the operator will arrive.⁸³ The rider also knows they will be able to provide feedback and will receive an electronic record of the trip, giving them an ability to track down any lost items.⁸⁴ At the heart of the proposal is giving the customer a choice.⁸⁵

Specifically as to the incentives that Rasier-PA builds into the platform to increase reliability, Mr. Gore explained that services to underserved areas are enhanced because the operator knows that passenger and payment information are already in the system. Since the rider has been identified, and it will be a cashless transaction, the operator feels safer and also knows that he or she will get paid for the ride.⁸⁶ Additionally, the dynamic or surge pricing mechanism that is enabled by the platform allows Rasier-PA to quickly, easily and transparently “increase prices at times of extreme demand in order to encourage more supply to get on the road to meet that demand.”⁸⁷ As Mr. Gore testified, “balancing supply and demand is a constant process.”⁸⁸

The antiquated and anti-competitive regulatory framework that allows existing carriers to protest the introduction of a new service is not in the best interest of the riding public that may not even be served by existing carriers and is demanding improved transportation alternatives. Further, it is interfering with technological advances delivering those affordable, safe and reliable options demanded by the public in Allegheny County. Rather than offering any testimony about the adverse effects of the proposed service on their existing operations, the

⁸² N.T. 268.

⁸³ N.T. 66.

⁸⁴ N.T. 66-67.

⁸⁵ N.T. 67.

⁸⁶ N.T. 268.

⁸⁷ N.T. 146.

⁸⁸ N.T. 147.

Protestants used the process to attack various aspects of the proposed experimental service. Obviously underlying those efforts is a desire to avoid facing competition.⁸⁹ If competitive options are not made available, it is the riding public who will lose. To permit the Protestants to affect approval of the proposed experimental service would be akin to the government precluding Bill Gate's formation of Microsoft and the launch of Windows to protect typewriter companies or preventing Henry Ford from producing an affordable automobile because it would be harmful to blacksmiths.

C. Rasier-PA Has Demonstrated That It Is Fit To Provide The Proposed Service.

1. Presumed Fitness of Existing Carrier and Experience of Affiliates.

Affiliates of Rasier-PA provide ridesharing services in over 160 cities and over 45 countries around the world.⁹⁰ A model that is very similar to what is proposed here has been successfully deployed in Washington, D.C.⁹¹ Relying on the experiences of its affiliates and the efforts of the current general manager of Uber Pittsburgh, Jennifer Krusius to comply with the *ETA Order* and grow the business,⁹² Rasier-PA is fit to provide the proposed services and will ensure that it provides ridesharing services in Allegheny County that fulfill and exceed the expectations of the Commission and the riding public.

Additionally, Rasier-PA's affiliate, Gegen, LLC, another wholly owned subsidiary of UTI, already holds authority to operate in Pennsylvania,⁹³ which supports a finding of overall technical, financial and legal fitness to provide the proposed service. *See South Hills Movers,*

⁸⁹ In the household goods moving industry, the Commission recently recognized the value of easing the entry process and touted the benefits of increased competition, customer choice and job creation. *Final Rulemaking Amending Regulations Applicable to Household Goods in Use Carriers*, Docket No. L-2013-2376902 (Order entered June 19, 2014).

⁹⁰ N.T. 58, 512.

⁹¹ N.T. 58.

⁹² N.T. 263.

⁹³ N.T. 60.

Inc. v. Pa. P.U.C., 601 A.2d 1308 (Pa. Cmwlth. Ct. 1992) (existing carriers are presumed to possess the technical, financial and legal fitness to obtain additional operating authority) (“*South Hills Movers*”). Specifically, on March 1, 2013, the Commission issued a brokerage license to Gegen, LLC, evidencing approval of the right and privilege to operate as a broker, to arrange for the transportation of persons, between points in Pennsylvania. *Application of Gegen, LLC, for Brokerage License*, Docket No. A-2012-2317300 (Order adopted January 24, 2013) (“*Gegen Brokerage License Order*”). As noted in the Commission’s *Gegen Brokerage License Order*, requests for service under that license are received via proprietary dispatch software, and carriers are contracted by Gegen to provide service. The application showed UTI as the sole member of the Gegen, and the *Gegen Brokerage License Order* identified Mr. Kalanick as the President and CEO of Gegen.⁹⁴ It further noted that he had two years of experience in the limousine industry, which included dispatching, hiring, training, risk management, marketing and budgeting. *Gegen Brokerage License Order* at 1.

Additionally, on October 29, 2013, the Commission issued a certificate of public convenience to Gegen authorizing the right to transport, as a common carrier, by motor vehicle, persons in limousine service, from points in Bucks, Chester, Delaware and Montgomery counties, to points in Pennsylvania, and return; excluding areas under the jurisdiction of the Philadelphia Parking Authority. *Application of Gegen, LLC, for Limousine Service*, Docket No. A-2012-2339043. Again, the application showed UTI as the sole member of Gegen.

Based on the extensive experience of its affiliates throughout the world and the existing Commission authority of its affiliates with common ownership, Rasier-PA is presumed to have the technical and financial fitness to provide the proposed service. In addition, Rasier-PA

⁹⁴ Mr. Kalanick is likewise the Manager of Rasier-PA. N.T. 53.

provided a Statement of Financial Position, which was submitted as part of its ETA application to show a forecast from August 2014 to July 2015, including operating revenues of \$1,914,322.⁹⁵

2. Insurance Proposal.

Section 32.11(a) of the Commission's regulations provides that a common carrier of passengers may engage in intrastate commerce after an insurer authorized to do business in this Commonwealth files a certificate, "to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service." 52 Pa. Code § 32.11(a). Section 32.11(b) of the regulations further provides that the liability insurance maintained by a common carrier of passengers on vehicles capable of transporting fewer than 16 passengers shall be in an amount not less than \$35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service, and requires as follows:

The \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of \$25,000 and first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. §§ 1701-1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits).

52 Pa.Code § 32.11(b).

The Commission's regulations further describe the process for complying with the insurance requirements, which do not contemplate any hearings on the issue. Specifically, even in a protested application, Section 3.381(e) explains that when the Commission approves

⁹⁵ Applicant Exhibit 2.

operation by a motor common carrier of passengers, a certificate of insurance must be filed within 60 days. 52 Pa. Code § 3.381(e). Section 3.381(f) refers to this evidence of insurance as a “Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance.” (“Form E”). 52 Pa. Code § 3.381(f).

As demonstrated by the testimony of Mr. Fuldner and the evidence admitted into the record, the insurance coverage proposed by Rasier-PA, as amended during the hearing, fully complies with and exceeds the minimum requirements imposed by the Commission on motor carriers of passengers. Upon approval of the application, Rasier-PA’s insurance carrier will file a new Form E with the Commission certifying that it has obtained the required insurance coverage.

Rasier-PA’s commercial automobile insurance carrier is James River Insurance Company (“James River”), which is a property and casualty carrier principally domiciled in Ohio.⁹⁶ James River is on the list of eligible surplus lines carriers maintained by the Pennsylvania Department of Insurance.⁹⁷ It is rated by A.M. Best, which is regarded as the most notable provider of credit ratings of insurance companies, as A-minus, or what is described as excellent, with the financial size category of IX, which indicates a policy holder surplus of two hundred and fifty to five hundred million dollars. The outlook as indicated by A.M. Best is positive with respect to James River’s future ratings.⁹⁸ James River filed the Form E with the Commission in connection with the *ETA Order*.⁹⁹

Rasier-PA’s insurance proposal, which if approved will result in securing the necessary policies and the filing of a Form E after approval of the application, is different from the

⁹⁶ N.T. 513.

⁹⁷ N.T. 513-514.

⁹⁸ N.T. 514.

⁹⁹ Applicant Exhibit 6.

proposal that was originally contained in the application.¹⁰⁰ Therefore, Mr. Fuldner orally amended the insurance proposal in connection with this application at the hearing.¹⁰¹

For purposes of explaining Rasier-PA's proposal for liability insurance coverage, Mr. Fuldner relied on the terminology used in the Commission's *ETA Order* as follows:

Stage 1: Driver opens the App and is logged in to the system

Stage 2: Driver receives and accepts a ride request and travels to pick up the passenger

Stage 3 – Driver picks up the passenger, drives the passenger to the destination and drops off the passenger

For Stages 1, 2 and 3, Mr. Fuldner testified that Rasier-PA proposes to provide primary liability insurance coverage for all vehicles operating on the platform from the time the App is on and the operator has logged into the system until transportation services have been completed.¹⁰² The only exception to Rasier-PA's proposal to provide primary coverage during all three stages is if an operator secures a policy that is specifically designed for ridesharing services or other for-hire transportation. In that situation, Rasier-PA's coverage would be excess to that primary policy.¹⁰³

Under Rasier-PA's proposal, the insurance could be provided by any combination of insurance maintained by the operator and Rasier-PA, so long as the operator's policy specifically recognizes the operator's use of the vehicle in connection with the ridesharing platform or otherwise use of the vehicle for hire.¹⁰⁴ This is the structure that was adopted in Colorado in June 2014, through Senate Bill 125, and has been implemented in eight or more other states or

¹⁰⁰ N.T. 645.

¹⁰¹ N.T. 514-516, 554-555, 563.

¹⁰² N.T. 514-516, 662-663, and Applicant Exhibits 5 and 7.

¹⁰³ N.T. 586-587, 662-663.

¹⁰⁴ N.T. 516.

municipalities since then.¹⁰⁵ It is also a model that is currently under consideration in Pennsylvania's General Assembly.¹⁰⁶

Also, for all three stages, Rasier-PA proposes to provide \$25,000 of first party medical benefits and \$10,000 of first party wage loss benefits for passengers and pedestrians, as required by Pennsylvania state law.¹⁰⁷ Additionally, Rasier-PA proposes to fully comply with 75 Pa.C.S. §§ 1701-1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirement of 75 Pa.C.S. § 1711 for first party coverage of the driver of certificated vehicles.¹⁰⁸

As to Stage 1, Rasier-PA proposes to provide coverage in the amount specified in the Commission's regulations of \$35,000, split in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.¹⁰⁹ For Stages 2 and 3, when the operator is conducting commercial operations, Rasier-PA proposes to provide a "best in class" \$1 million of third party liability insurance at a combined single limit.¹¹⁰ In addition, Rasier-PA proposes to maintain a \$1 million in uninsured/underinsured coverage for bodily injury per incident.¹¹¹

Since Rasier-PA's proposal mirrors the Commission's requirement for Stages 2 and 3 in the *ETA Order*, Rasier-PA offered its ETA \$1 million insurance policy into the record of this proceeding.¹¹² As to Stage 1, however, Rasier-PA's proposal is different than the Commission's requirement in the *ETA Order*. Therefore, that policy has not yet been written and is not

¹⁰⁵ N.T. 516.

¹⁰⁶ See H.B. 2453.

¹⁰⁷ N.T. 515.

¹⁰⁸ N.T. 662.

¹⁰⁹ N.T. 515.

¹¹⁰ N.T. 515, 565.

¹¹¹ N.T. 515

¹¹² Applicant Exhibit 5 and 7, N.T. 578-579.

available, but if the Commission approves this proposal, Rasier-PA will secure the policy and its insurance carrier will file a new Form E.¹¹³

Mr. Fuldner further testified that operators are required to provide proof of registration and insurance to Rasier-PA before operating on the platform and that these items are checked annually.¹¹⁴ He also emphasized, however, that if either the registration or insurance would later lapse, that would have no impact on the insurance coverage provided by Rasier-PA.¹¹⁵ Likewise, if a driver's license lapsed, insurance coverage would not be affected.¹¹⁶

Mr. Fuldner's testimony addressed various other scenarios in which Rasier-PA's insurance policies would be applicable. He stressed that the coverage provided by Rasier-PA's insurance policies is only contingent upon use of the App by an operator on the platform and that coverage continues until after transportation services have been completed.¹¹⁷ He further clarified that the coverage is not contingent on whether the operator has a personal policy or whether the operator violates any terms of its agreement with Rasier-PA.¹¹⁸ He also confirmed that coverage applies even if the vehicle was not previously approved.¹¹⁹ In addition, he testified that coverage is not dependent on the lawful conduct of the operator and is still applicable in the event of fraudulent conduct of the operator, although he indicated that such conduct would result in a deactivation of the operator from the platform.¹²⁰ Moreover, Mr. Fuldner confirmed that a trip that begins in Pennsylvania and ends in a different state would be fully covered.¹²¹

¹¹³ N.T. 645.

¹¹⁴ N.T. 545, 548.

¹¹⁵ N.T. 519 and 579.

¹¹⁶ N.T. 579.

¹¹⁷ N.T. 603, 609. He noted that coverage is also available in limited circumstances when the App is not on, such as might occur in the event of a dead battery. N.T. 606.

¹¹⁸ N.T. 612.

¹¹⁹ N.T. 613.

¹²⁰ N.T. 634, 650

¹²¹ N.T. 664-665.

As to a situation where an operator loans the smartphone to another person, Mr. Fuldner noted that the Rasier-PA policy would not provide coverage but emphasized that the lack of insurance would not affect the issue of Rasier-PA liability.¹²² Furthermore, the Form E on file with the Commission would require the policy to pay the amounts required in Commission orders regardless of any other policy language.¹²³ Regarding a scenario where a passenger has been dropped off in a driveway and the Operator then turns the App off, Mr. Fuldner indicated that the operator's personal policy would likely be applicable and that the applicability of Rasier-PA coverage would depend on whether transportation services had been completed and still be part of the covered service.¹²⁴ In that situation, the Form E on file with the Commission would effectively the policy to cover that.¹²⁵ He noted that coverage under the policies includes dropping off of passengers.¹²⁶

Questions were raised during the hearing about why Rasier-PA does not procure a taxicab insurance policy to cover its operations. Mr. Fuldner explained that many structural barriers exist to doing so and that such a policy is not appropriate for Rasier-PA's business model.¹²⁷ He indicated that a traditional taxicab policy is sold, priced and rated on the basis of a description of the vehicle and the region in which it is operated.¹²⁸ Noting that taxicab vehicles are used full time and often by multiple drivers and multiple shifts, Mr. Fuldner testified that it would not be uncommon for a taxi to be driven 70,000 to 100,000 miles per year.¹²⁹ Since the pricing implied in this historical system of rating assumes that level of use of the vehicle, it is

¹²² N.T. 613-615.

¹²³ N.T. 645.

¹²⁴ N.T. 656-658, 665-666, 680.

¹²⁵ N.T. 657-658.

¹²⁶ N.T. 639.

¹²⁷ N.T. 591.

¹²⁸ N.T. 592-593.

¹²⁹ N.T. 593

inconsistent with the ridesharing model that uses operators who are driving on a part-time or seasonal basis.¹³⁰ Given that ridesharing vehicles are not in commercial use on a 24/7 basis and the exposure for a ridesharing operator is much lower, a taxicab policy would be cost-prohibitive and counter-productive to the benefits that flow from ridesharing services to the public.¹³¹

Questions were also raised during the hearing about Rasier-PA not providing operator lists and vehicle lists to James River. As Mr. Fuldner testified, Rasier-PA does not provide a list of operators or a list of vehicles to James River.¹³² Rather, James River approves a class of operators and class of vehicles, establishes minimum standards for those operators and vehicles and relies on Rasier-PA's processes to fully vet those operators and vehicles for compliance with its standards.¹³³ Mr. Fuldner testified that James River charges Rasier-PA on a per mile basis,¹³⁴ and therefore James River does not need a list of vehicles in order to measure its underwriting exposure or to calculate its premium in the same way that an insurer that sold insurance on a per vehicle year basis would. In fact, the per mile pricing allows James River to match the pricing more closely to the exposure that it must insure.

As to notifications to operators, Mr. Fuldner testified that during the onboarding process, Rasier-PA currently advises operators as to various insurance-related items.¹³⁵ Specifically, Rasier-PA notifies operators that their personal insurance policy may not afford coverage under liability, comprehensive, collision, uninsured motorist, first party medical benefits or any other coverage in connection with their use of the platform.¹³⁶ Rasier-PA further requires the operators to acknowledge the notification that their personal automobile policy may not provide

¹³⁰ N.T. 593-594.

¹³¹ N.T. 594, 598-599.

¹³² N.T. 616-617.

¹³³ N.T. 617-618, 645.

¹³⁴ N.T. 629.

¹³⁵ N.T. 545-546.

¹³⁶ N.T. 535-536, 545.

coverage.¹³⁷ In addition, Rasier-PA recommends that if operators have any questions about coverage, they should pursue those with their personal insurance carriers.¹³⁸ Rasier-PA also informs operators of the insurance that it provides.¹³⁹ Further, Rasier-PA advises operators how to download evidence of insurance and instructs them to furnish such certificates or other evidence of Rasier-PA's insurance in the event of an accident.¹⁴⁰

With respect to the proposal advanced by the Insurance Federation that Rasier-PA require operators to notify their personal insurers that they are operating on the ridesharing platform and to maintain records of such notifications, Mr. Fuldner explained that this requirement would be inappropriate and unduly burdensome. Given Rasier-PA's proposal to provide primary coverage, and only rely on an operator's own policy if it specifically recognizes the driver's use of the vehicle in for-hire transportation, Mr. Fuldner testified that there is no purpose in such a notification.¹⁴¹ He further noted that a personal automobile insurance policy is a private contract between the operator and their insurance company, to which Rasier-PA is not a party.¹⁴² As such, it would be unduly burdensome to handle all the paperwork associated with imposing a notification requirement and maintaining records.¹⁴³ While Rasier-PA currently assumes the burdens of verifying and updating personal insurance coverage, these additional steps would mandate that Rasier-PA impose a requirement on the operators to contact their carriers, confirm that such notification has occurred and retain those records.¹⁴⁴ All of this would be done for no purpose since Rasier-PA does not propose to rely on that coverage.¹⁴⁵

¹³⁷ N.T. 536-539, 545.

¹³⁸ N.T. 538, 545.

¹³⁹ N.T. 537-538.

¹⁴⁰ N.T. 549-550, 553, 586-587, 637, 663.

¹⁴¹ N.T. 516-517.

¹⁴² N.T. 517.

¹⁴³ N.T. 517 and 540-541.

¹⁴⁴ N.T. 663

¹⁴⁵ N.T. 664.

Moreover, as Mr. Fuldner testified, such a requirement is not customary in other uses of personal automobiles in the course of business.¹⁴⁶ Specifically, he described a broad class of insurance known as “hired-and-non-owned auto coverage” that is sold to businesses covering vehicles used in the course of that business but not owned by that business.¹⁴⁷ Pointing to ridesharing as one component of that, Mr. Fuldner identified several other such industries that have existed for decades including home health care, real estate, pizza delivery, newspaper delivery and various volunteer services, which involve the use of a personal vehicle in the course of some other business.¹⁴⁸ As an example of such a policy, Mr. Fuldner referred to a filing made by the Great American Insurance Company with the Pennsylvania Department of Insurance.¹⁴⁹ This filing describes a product of Great American Insurance Company called Allied Health that is approved by the Pennsylvania Department of Insurance, which covers a variety of non-owned automobile exposures related to health care related businesses, such as home health care and services for various classes of disabilities, rehabilitation, and dietary and nutrition services.¹⁵⁰ Although this insurance product specifically contemplates the use of personal automobiles to transport passengers in the course of the business of health care service, Mr. Fuldner testified that there is no requirement for a notification to be sent to personal insurance carriers in connection with this use or other uses of personal automobiles in the course of a business in the state of Pennsylvania.¹⁵¹ This is despite the fact that the product from Great American

¹⁴⁶ N.T. 517, 523, 664.

¹⁴⁷ N.T. 520.

¹⁴⁸ N.T. 520.

¹⁴⁹ Applicant Exhibit 4; N.T. 520-521.

¹⁵⁰ N.T. 521.

¹⁵¹ N.T. 521-523.

specifically relies on the personal automobile policy to provide required Pennsylvania financial responsibility benefits.¹⁵²

Protestants made various comments about the process that James River uses to underwrite the insurance it sells to Rasier-PA. They also used the example of the failure of the Ocean Risk Retention Group (“RRG”) as an example of the difficulty of underwriting taxi insurance. Mr. Brodsky testified that Ocean RRG had \$2.5 to \$3.5 million of capital.¹⁵³ This is approximately 1% of the \$250 to \$500 million that Mr. Fuldner testified that James River has to protect its policy holders.¹⁵⁴ James River is also highly rated by A.M. Best while Ocean RRG is not rated at all.¹⁵⁵ An unrated and thinly capitalized insurer’s past difficulties have no bearing on James River’s dealings with Rasier-PA.

Through primary liability insurance coverage that covers use of the vehicle from the time the App is on and the operator has logged into the system through the completion of transportation services, Rasier-PA’s proposal meets and exceeds the requirements imposed on motor carriers in Pennsylvania and does so without relying on the personal automobile policy while the vehicle is used in motor carrier operations. In sum, Rasier-PA has presented sufficient evidence in support of its proposed insurance coverage and communications with its operators to demonstrate compliance with the Commission’s regulations.

3. Driver Integrity.

With respect to driver integrity, Rasier-PA requires operators to meet standards that are consistent with and significantly more stringent than the standards set forth in the Commission’s

¹⁵² Applicant Exhibit 4, N.T. 626.

¹⁵³ N.T. 724.

¹⁵⁴ N.T. 514.

¹⁵⁵ N.T. 514, 725.

regulations at 52 Pa. Code §§ 29.502-29.507.¹⁵⁶ In addition to basic requirements for operators to possess a current, valid driver's license, proof of registration, proof of motor vehicle insurance and be at least 21 years of age, Rasier-PA conducts extensive criminal background checks and reviews of driving history records, automatically disqualifying individuals who do not meet Rasier-PA's driver integrity requirements.¹⁵⁷

Specifically, Rasier-PA conducts a local and national criminal background check that includes the Multi-State/Juris Criminal Records Locator and the National Sex Offender Registry database on each operator before the operator may access to the platform to receive requests for transportation. A match on the National Sex Offender Registry or a conviction that appears on a criminal background check within the past 7 years for crimes of violence, sexual abuse, felony robbery, or felony fraud, automatically and permanently disqualifies an individual from acting as an operator.¹⁵⁸

As to the driving history records of operators, Rasier-PA performs these reviews on each operator before the operator may access the platform to receive requests for transportation. A conviction that appears on a driving history check within the past 7 years for aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade police, or the use of a motor vehicle to commit a crime, or a conviction in the previous 3 years for driving with a suspended or revoked license, automatically disqualifies an individual from acting as an operator.¹⁵⁹

¹⁵⁶ N.T. 60.

¹⁵⁷ N.T. 60-63.

¹⁵⁸ N.T. 60-61.

¹⁵⁹ N.T. 61-62. Rasier-PA acknowledges the Commission's conditional approval of the of the experimental authority application in the *Yellow Cab Order* requiring the filing of a description of a driver training program as part of the compliance phase and anticipates being subjected to a similar requirement if the applications is approved.

Rasier-PA has a zero tolerance policy on the use of drugs or alcohol while an operator is providing transportation services. Notice of this zero tolerance policy is maintained on its website, along with procedures to report a complaint about an operator who the rider suspects was under the influence of drugs or alcohol during the course of the ride. Rasier-PA immediately suspends an operator upon receive of such a passenger complaint and the suspension lasts the duration of Rasier-PA's investigation. If Rasier-PA concludes that the operator was under the influence of drugs or alcohol while operating on the platform, the operator will be deactivated from the system.¹⁶⁰

While a point was raised during the hearing about the lack of control that Rasier-PA exercises over its operators, it was also emphasized that when operators fail to fulfill the requirements of their agreements with Rasier-PA, they are deactivated from the system. Examples of conduct that would result in deactivation include not permitting a guide dog to ride with a blind person,¹⁶¹ accepting a street hail,¹⁶² fraud,¹⁶³ lapses in personal insurance¹⁶⁴, and for failure to provide updated insurance and vehicle registration information.¹⁶⁵ Moreover, Mr. Gore testified that Rasier-PA is responsible for the actions of its independent contractors.¹⁶⁶

4. Vehicle Safety.

As to vehicle safety, Rasier-PA requires all Pennsylvania vehicles operated on the platform to undergo and pass an annual and comprehensive safety inspection, as required by the Commission's regulations at 52 Pa. Code §§ 29.402 and 29.405. Such inspection must be performed by an official inspection station and comply with Pennsylvania vehicle laws and

¹⁶⁰ N.T. 62.

¹⁶¹ N.T. 265.

¹⁶² N.T. 267.

¹⁶³ N.T. 650.

¹⁶⁴ N.T. 519.

¹⁶⁵ N.T. 308.

¹⁶⁶ N.T. 292.

regulations at 75 Pa. C.S. Chapter 47 and 67 Pa. Code §§ 175.61-175.80, including but not limited to suspension and steering components; braking systems; tires and wheels; lighting and electrical systems; and horns and warning devices.¹⁶⁷ Further, the vehicles will be subject to routine inspections by Commission enforcement officers and can be taken off the street if they do not meet the state's standards.¹⁶⁸

The Protestants have raised questions about how Rasier-PA will “certify” compliance with the Commission’s vehicle equipment requirements. They refer to Section 29.402 of the Commission’s regulations, which provide that a common carrier may not permit a vehicle to be operated unless it complies with the Pennsylvania equipment inspection standards “at all times when the vehicle is operated.” 52 Pa. Code § 29.402. The regulation does not require any inspections beyond Pennsylvania’s annual inspection requirement and does not require any kind of certification by the passenger carrier. The standard set forth in the Commission’s regulations - of ensuring that a vehicle complies with Pennsylvania inspection requirements “at all times when the vehicle is operated” - is impossible for any motor carrier to guarantee. For instance, a mechanical defect can be overlooked during an inspection or a mechanical defect can arise shortly after an inspection. The purpose of the regulation is to hold the carrier responsible, so that if a vehicle is found by a Commission enforcement officer to fall short of the Pennsylvania inspection requirements, the carrier is required to have the defect repaired and may be subject to payment of a civil penalty. It will be no different for Rasier-PA.¹⁶⁹

As Mr. Gore testified, if the annual Pennsylvania inspection requirement is “sufficient for cars to be on the road with pedestrians and passengers, then they’re sufficient for us.”¹⁷⁰

¹⁶⁷ N.T. 65.

¹⁶⁸ N.T. 267.

¹⁶⁹ N.T. 292.

¹⁷⁰ N.T. 280.

However, Rasier-PA goes above that requirement by requiring the use of high quality vehicles, as demanded by their riders, and by following up on customer feedback about the quality of the vehicles.¹⁷¹ Moreover, the vehicle markings that Rasier-PA is using to be compliant with the *ETA Order* will enable the Commission's enforcement officers to identify them for inspection.¹⁷² The Commission's routine inspection process layered on top of Rasier-PA's efforts will optimize the safety of the vehicles being used in Rasier-PA's proposed service.

Additionally, Rasier-PA requires that vehicles be no more than 8 years old and that eligible vehicles include street-legal coupes, sedans, or light duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles and pickup trucks.¹⁷³ Rasier-PA further requires that vehicles be in a condition that meets or exceeds the standards set forth in 52 Pa. Code § 29.403, including seats in working order; vehicles in clean and sanitary condition; factory type heaters in working order; clean trunk compartments suitable for carrying luggage; exteriors free of large dents or gouges; four matching wheel covers; and operative air conditioning.¹⁷⁴

As to vehicle odometer limitations, Mr. Gore explained that Rasier-PA is currently complying with the *ETA Order* limiting odometer readings to 100,000 miles. He testified, however, that for purposes of the pending application, he did not believe mileage limitations would improve the quality of the cars. In his view, this is because Rasier-PA's riders are very sensitive to quality and hold the company to a higher standard than the odometer limitation can likely achieve.¹⁷⁵ Therefore, Rasier-PA proposes that the Commission consider removal of this limitation or selection of a higher odometer reading limitation in connection with this application.

¹⁷¹ N.T. 64-65.

¹⁷² N.T. 117, 267.

¹⁷³ N.T. 64.

¹⁷⁴ N.T. 64.

¹⁷⁵ NT. 64.

5. *Customer Service.*

The way that Rasier-PA receives information from riders is through customer service channels available through the website and through feedback left on a trip, which could include replying to a receipt or using email contact information provided on the website to lodge complaints.¹⁷⁶ This receipt will also contain information to contact the Commission with complaints about the service.¹⁷⁷ In addition, riders may rate operators and offer feedback through the App. When Rasier-PA receives a complaint from a customer, it investigates the issue and timely responds to the customer.¹⁷⁸ As Mr. Gore testified, the availability of feedback “creates a situation where independent operators seek to provide the best service possible with the best vehicles possible because they know they’re accountable.”¹⁷⁹

6. *Propensity to Operate Safely and Legally.*

The record is replete with examples of Rasier-PA’s propensity to operate safely and legally, including the following:

- Obtaining a brokerage license in response to concerns raised by Commission staff about ridesharing services¹⁸⁰
- Filing the pending application and the ETA application when advised by Commission staff that the brokerage license would not cover these operations¹⁸¹
- Implementing robust driver integrity requirements and automatically disqualifying individuals who would pose a threat to the safety of the riding public¹⁸²
- Requiring vehicles to meet or exceed Pennsylvania inspection standards¹⁸³

¹⁷⁶ N.T. 65.

¹⁷⁷ N.T. 129.

¹⁷⁸ N.T. 65.

¹⁷⁹ N.T. 269.

¹⁸⁰ N.T. 83.

¹⁸¹ N.T. 83.

¹⁸² N.T. 63.

¹⁸³ N.T. 33.

- Removing vehicles that are more than 8 years old and have more than 100,000 miles on the odometer from the platform in compliance with the *ETA Order*¹⁸⁴
- Complying with the *ETA Order* to use trade dress to mark the vehicles so that Commission enforcement officers can identify them¹⁸⁵
- Relying on rider feedback to ensure accountability of drivers as to safe driving and the condition of vehicles¹⁸⁶
- Maintaining “best in class” \$1 million of liability insurance coverage during a trip since before entering Pennsylvania to protect passengers¹⁸⁷
- Modifying liability insurance coverage to be compliant with the *ETA Order*¹⁸⁸
- Revising its receipt to include Commission contact information for consumers to submit complaints about the service¹⁸⁹

Despite these demonstrations by Rasier-PA of its legal fitness, challenges have been made on the basis of a pending complaint filed against Rasier-PA’s parent company by the Commission’s Bureau of Investigation and Enforcement alleging that it has brokered transportation services in Pennsylvania without a license, and continued operations by an affiliate of Rasier-PA after the issuance of a cease and desist order by the Commission on July 24, 2014. However, nothing in the record demonstrates that Rasier-PA “lacks a propensity to operate safely and legally.” 52 Pa. Code § 41.14(b). Moreover, Rasier-PA notes that no evidence was introduced to suggest that its licensed and certificated affiliate, Gegen, has operated unlawfully, which again suggests a presumption of legal fitness. *See South Hills Movers, supra.*

It is well-established that an applicant’s prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. *Brinks, Inc. v. Pennsylvania*

¹⁸⁴ N.T. 64.

¹⁸⁵ N.T. 117, 267.

¹⁸⁶ N.T. 269.

¹⁸⁷ N.T. 565.

¹⁸⁸ Applicant Exhibit 6.

¹⁸⁹ N.T. 129.

Public Utility Commission, 500 Pa. 387, 456 A.2d 1342 (1983); *Gettysburg Tours, Inc. v. Pennsylvania Public Utility Commission*, 42 Pa. Commw. 399, 400 A.2d 945 (Pa. Cmwlth. 1979). The Commission may still grant additional authority if it finds that such unlawful operations resulted from good-faith misunderstanding of the law. *W.C. McQuaide, Inc. v. Pennsylvania Public Utility Commission*, 137 Pa. Commw. 282, 585 A.2d 1151 (Pa. Cmwlth. 1991). Further, for the Commission to conclude that an applicant lacks propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an applicant has a “persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission.” *Application of ATM Corporation of America, t/d/b/a Classic Limousine Transportation*, Docket No. A-00112166 (Order entered September 24, 1996). There, the Commission found the applicant fit even though applicant had violated the Commission’s regulations a number of times.

In decisions relating to legal fitness, the Commission has interpreted “persistent disregard” of the Code, its regulations or its orders as occurring only after numerous violations, which demonstrate that a common carrier has no intent of operating legally or safely. A single violation is insufficient to demonstrate a persistent disregard for the Public Utility Code, Commission regulations or its orders. *See Application of Harrisburg City Cab, Inc.*, Docket No. A-00122208 (Initial Decision dated July 20, 2007) (Final Order entered September 7, 2007). The Commission has further explained legal fitness for the most part turns on violations established through administrative proceedings. *Harrisburg City Cab* at 11.

With respect to the pending complaint proceeding, those are merely *allegations* of unlawful operations by Rasier-PA’s parent that have not been adjudicated by the Commission. UTI was under no obligation to stop licensing its software product to a subsidiary upon the filing

of that complaint. It is far from clear under Pennsylvania law that licensing an App for this purpose constitutes the brokering of transportation services. The mere fact that several bills have been introduced by the General Assembly to capture these services suggests that they are not necessarily covered by the Code.¹⁹⁰

As to operations that continued after issuance of a cease and desist order by the Commission, Mr. Gore testified that these activities have been conducted through Rasier LLC (“Rasier”), a different wholly owned subsidiary of UTI.¹⁹¹ He explained his understanding of the Commission’s jurisdiction and current regulations is that they do not address the business model and operations that Rasier LLC is currently providing.¹⁹² Despite that position, however, he noted that Gegen applied for and received a statewide brokerage license.¹⁹³ Upon being advised that the Gegen license would not cover ridesharing, the decision was made for Rasier-PA to file this experimental application and the ETA application to provide similar services.¹⁹⁴

Mr. Gore further testified that Rasier LLC did not stop operating after issuance of the cease and desist order because of the grant of ETA to Rasier-PA the same day, which allowed riders to continue having a much-needed safe, reliable and affordable alternative to existing transportation options.¹⁹⁵ He emphasized, “[w]e’re providing ways for people to get home from nights out and not get a DUI; we’re providing ways for people to get to and from their work and hospitals and other places they need to be when they simply can’t and won’t avail themselves of current transportation options.”¹⁹⁶ Noting that Rasier was providing alternative choices to

¹⁹⁰ See, e.g., S.B. 1457; H.B. 2446; H.B. 2445; H.B. 2453; and 2468.

¹⁹¹ N.T. 81-83.

¹⁹² N.T. 82.

¹⁹³ N.T. 83.

¹⁹⁴ N.T. 83.

¹⁹⁵ N.T. 83.

¹⁹⁶ N.T. 83.

consumers and operators as another method of income, Mr. Gore explained that it continued “to operate in order to not pull the rug out from those people.”¹⁹⁷

While the grant of ETA was conditioned upon the filing of a tariff and a Form E Certificate of Insurance, Rasier-PA was in substantial compliance with those conditions immediately¹⁹⁸ and obtained a certificate of public convenience within a matter of weeks. In fact, Mr. Fuldner testified that no accidents occurred during that time period where the pre-ETA structure of the insurance resulted in a delay or denial of a claim for bodily injury or property damage.¹⁹⁹ Under all of these circumstances, it would have been a travesty to pull a needed service off the market in Allegheny County, denying consumers access to transportation alternatives that allowed them to attend school, get to work and visit dying relatives in the hospital and depriving operators of the opportunity to maintain and grow their small businesses.

This is a far cry from a situation in which an applicant has been found to have violated the Commission’s regulations on multiple occasions or persistently acted in a way that demonstrates that it has not intent to operate legally or safely. In fact, neither Rasier-PA, its parent nor any of its affiliates has been found by the Commission to have violated a provision of the Public Utility Code or regulations.

Based on all of these factors, Rasier-PA strongly disagrees with the characterization in the Commission’s July 28, 2014 Secretarial Letter issued at Docket No. C-2014-2422723 of UTI’s activities as being indicative of “prior unlawful operations” or representing a “contumacious refusal” to obey Commission orders. As no prior operations have been determined to be unlawful, and Rasier-PA has worked with the Commission to fit its model into an antiquated regulatory framework that was not designed for products that are now available

¹⁹⁷ N.T. 83.

¹⁹⁸ Applicant Exhibit 6.

¹⁹⁹ N.T. 523-526.

due to technology, its activities and efforts support a finding of legal fitness. As a whole, the record demonstrates Rasier-PA's legal fitness, and the application should be granted commensurate with the public need and support for the proposed service which is immediate and overwhelming.

D. Miscellaneous Issues Raised by Protestants Are Irrelevant to Pending Application.

Through their protests and cross examination of Rasier-PA's witnesses, the Protestants have raised other miscellaneous issues regarding the pending application, none of which should affect or interfere with its approval. One such issue relates to claims that the proposed service does not entail providing transportation to passengers and therefore does not meet the Code's definition of "common carrier" and that the proposed service likewise does not fall under the Code's definition of "broker" because it does not contemplate the use of certificated carriers to provide the transportation. This argument presents a classic "Catch 22" situation and is advanced by the Protestants solely for the purpose of seeking to avoid competition.

It is precisely because the proposed new and innovative service does not fit squarely within the types of transportation service delineated under the Code and the Commission's regulations that it qualifies as "experimental service." See *Yellow Cab Order*. Until such time as the Code and the Commission's regulations can catch up with technology, the Commission has appropriately acted to ensure that the existing regulatory framework does not prevent the delivery of new and innovative transportation options to the riding public and has properly classified the proposed ridesharing services as "experimental services."

Another issue raised by the Protestants concerns the applicability of Pennsylvania's Ridesharing Arrangement Act ("Ridesharing Act"), 55 P.S. §§ 695.1-695.9. Essentially, the purpose of the Ridesharing Act is to permit transportation of passengers by drivers who are not

engaged in transportation as a business in specific situations involving transportation to places of employment and transportation by a public agency or nonprofit organization for the agency's clientele or for a program sponsored by the agency. Rasier-PA's use of the term "ridesharing services" to describe its proposed service is a generic description of the service and not intended to be covered by the Ridesharing Act.²⁰⁰ Rather, as evidenced by the filing of the pending application and the ETA application, Rasier-PA has clearly demonstrated that it does not seek to fall within the parameters of the Ridesharing Act but rather is attempting to use the Commission's regulatory framework to cover its proposed service.

Concerns have also been raised about terms and conditions to which users agree when they download the UTI App to their smart phones, particularly with respect to limitation of liability provisions and the ability of users to pursue complaints with the Commission. These issues are red herrings and have no relevance to the pending application. The licensing agreement signed is a private contract between the user and UTI relating specifically to the use of the software.²⁰¹ It is well-established that the Commission has no jurisdiction to review private contracts. *See Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. 1978); *David B. Lytle v. T.W. Phillips Gas & Oil Company*, 2002 Pa. PUC LEXIS 44.

Moreover, as a private contract between UTI and its users for use of software, the licensing agreement has no bearing on the obligations and responsibilities that Rasier-PA owes to the Commission and the riding public, and is irrelevant to this proceeding. For instance, the Form E filed by James River certifies that Rasier-PA has insurance coverage "covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law...or the

²⁰⁰ N.T. 218.

²⁰¹ JB Taxi Exhibit A.

Commission orders or regulations promulgated in accordance therewith.”²⁰² Further, as a certificated entity via the *ETA Order*, Rasier-PA is fully subject to the Commission’s jurisdiction and required to comply with requirements governing the processing and adjudication of consumer complaints about its operations in Pennsylvania.²⁰³ See 66 Pa.C.S. § 701.

Another issue raised by the Protestant suggests that by requiring patrons to use a credit card, Google wallet or a bank account to pay for the proposed service, Rasier-PA would be discriminating against patrons who prefer to use cash or who do not have Internet access or a smart phone. Code Section 1304 provides that no public utility may grant an unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice. 66 Pa.C.S. § 1304. Certainly, in the year 2014, the requirements to have a credit card or bank account cannot be viewed as an “unreasonable” basis upon which to provide service. If a rider does not have either a credit card or bank account, that individual would simply not be eligible to access transportation through the App. Likewise, no unreasonable preference or prejudice exists as a result of the need to have Internet access or a smartphone in order to use the App to arrange transportation.

Questions have been raised about surge pricing and the opportunity for Rasier-PA to impose higher than normal rates at certain times. As explained by Mr. Gore, the purpose of surge pricing is to ensure that supply is available to meet demand.²⁰⁴ Further, consumers know in advance of the trip that surge pricing is in effect and they are free to find another form of transportation if they do not wish to pay the higher rates in that situation.²⁰⁵

²⁰² Applicant Exhibit 6.

²⁰³ N.T. 129, 132, 265-267, 274.

²⁰⁴ N.T. 146-148.

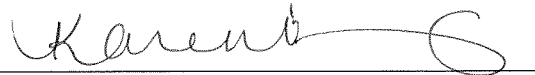
²⁰⁵ N.T. 270.

V. CONCLUSION

WHEREFORE, on the basis of the foregoing, Rasier-PA LLC respectfully requests that the Commission grant the application and issue a certificate of public convenience evidencing approval to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania.

Respectfully submitted,

Dated: September 15, 2014



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Appendix A: Proposed Findings of Fact

Docket No. A-2014-2416127
(Allegheny County Application)

1. Rasier-PA, LLC is a limited liability corporation (“LLC”) registered with Delaware and registered with Pennsylvania as a foreign LLC. N.T. 53.
2. Rasier-PA is a wholly owned subsidiary of Uber Technologies, Inc. (“UTI” or “Uber”). N.T. 53.
3. The manager of Rasier-PA is Travis Kalanick, and there are no other members of the LLC. N.T. 53.
4. By this application, Rasier-PA requests authority to utilize a digital platform to connect passengers to independent ridesharing operators (operators) using their personal vehicles. N.T. 160-161.
5. The proposed ridesharing service is commonly referred to as UberX and often described as the low cost option. N.T. 71-74.
6. Rasier-PA licenses technology that was created and owned by UTI to generate leads from riders. N.T. 57.
7. Rasier-PA contracts with operators who use their personal vehicles to provide ridesharing services. N.T. 57.
8. When operators partner with Rasier-PA, they are given a smartphone that is preloaded with a mobile application, licensed from UTI, which allows them to receive and accept ride requests. N.T. 57.
9. Operators receive the gross fare from rides, less twenty percent that that is paid to cover fees including licensing of the UTI technology. NT. 200.
10. Riders request transportation via UTI technology through the Internet or a mobile application (“App”) on their smartphones or tablets. N.T. 55.
11. Riders are required to create a user account and supply a valid credit card or bank account number. N.T. 55, 480-481.
12. To use the App on their smartphones or tablets, riders must download the App. N.T. 55.
13. When riders want to request a ride, they open the App and see a map that resembles Google Maps with a pin that they can move to their current location or to the location they want to use for the originating point of the ride. N.T. 57, 476.
14. To request a ride through the app, the rider clicks “request a ride” and then confirms that he or she would like a ride originating at the location selected on the App. N.T. 57, 476.
15. Prior to requesting a ride, riders are able to view the method that is being used to calculate the fare and the applicable rates being charged. N.T. 80.
16. Riders also have the option of requesting an estimated fare before booking the ride. N.T. 80.
17. Under Rasier-PA’s proposed tariff, the rate may be calculated on the basis of time and distance, will have a base fare, may include a flat rate for certain trips, and may increase or decrease as necessary to match supply and demand. Applicant Exhibit 3, N.T. 80.
18. Dynamic or surge pricing describes the increases or decreases that are necessary to match supply and demand. N.T. 476.
19. Cancellation and cleaning fees may be assessed with advance notice to the customer. N.T. 80.

20. Upon the rider requesting a ride, the closest operator who has signaled as being available to provide transportation is pinged. N.T. 56.
21. If the operator accepts the request, he or she receives the user's location and proceeds to pick up the rider. N.T. 56.
22. If the operator does not accept the request, it automatically goes to the next closest available operator. N.T. 229.
23. When an operator accepts a request, the rider receives the vehicle type and license number, a photo of the operator, an indication of the operator's current location and estimated time of arrival. N.T. 58.
24. The rider is also able to watch on the App as the operator approaches his or her location. N.T. 58.
25. Operators are not permitted to solicit or accept street hails. N.T. 58.
26. Upon completion of the trip, no cash exchanges hands since the rider's payment information is already on file. N.T. 55, 480-481.
27. The customer exits the vehicle, and an electronic receipt is transmitted to the passenger's email address or App documenting the details of the trip. N.T. 56.
28. The receipt contains information for the passenger to contact the Commission if he or she has a complaint about the service that was provided. N.T. 129.
29. Affiliates of Rasier-PA offer ridesharing services in over 160 cities and over 45 countries around the world. N.T. 58, 512.
30. The proposed service enabled Ms. Sally J. Guzik to visit a loved one at the hospital who was very ill of terminal cancer. N.T. 36-37.
31. The proposed service enabled eight other riders who submitted supporting statements with the ETA application to access reliable and affordable transportation in Allegheny County. Applicant Exhibit 1, ETA Application, Exhibit C.
32. Mayor Peduto has publicly supported the proposed service. ETA Application, ¶ 17.
33. Rasier-PA receives multiple requests hourly for ridesharing in Allegheny County. N.T. 66.
34. When launching a new service, the experience of Rasier-PA affiliates has been consistently one of overwhelming and instant demand and use. N.T. 66.
35. If the application is approved, ridesharing will continue to thrive in Allegheny County. N.T. 78.
36. In more established markets, ridesharing operators driving forty hours per week have median earnings of over \$95,000 per year in New York City and nearly \$75,000 per year in San Francisco. N.T. 75.
37. The number of taxis per 1,000 people in Pittsburgh is less than two, compared to ten taxis per 1,000 people in Washington, D.C. N.T. 75-76.
38. Ridesharing benefits blind and visually impaired individuals by providing an easy payment option and the use of an App. N.T. 162-163.
39. Using the App is as simple as pressing a button. N.T. 66.
40. Benefits to riders include the comfort of knowing of who is coming; when that car will be there; there will be an electronic record of the trip; they do not have to carry cash; their credit card will be accepted; there is a feedback system for complaints; if they lose an item, it can be tracked down; and they have a choice. N.T. 67.

41. The entry of ridesharing into a new market reduces wait times for a ride especially in underserved neighborhoods. N.T. 70.
42. The entry of ridesharing into a new market causes DUI rates to decline. N.T. 75.
43. The availability of ridesharing frequently grows the base of riders rather than replaces the services provided by transportation. N.T. 67.
44. The ridesharing platform is designed to increase reliability. N.T. 268.
45. Balancing supply and demand is a constant process. N.T. 147.
46. A model that is very similar to what is proposed here has been successfully employed in Washington, D.C. N.T. 58.
47. Rasier-PA's commercial automobile insurance carrier is James River Insurance Company, which is a property and casualty carrier principally domiciled in Ohio. N.T. 513.
48. James River is on a list of eligible surplus line carriers maintained by the Pennsylvania Department of Insurance. N.T. 513-514.
49. James River is rated by A.M. Best, which is regarded as the most notable provider of credit ratings of insurance companies, as A-minus, or what is described as excellent, with the financial size category of IX, which indicates a policy holder surplus of two hundred and fifty to five hundred million dollars. N.T. 514.
50. The outlook as indicated by A.M. Best is positive with respect to James River's future ratings. N.T. 514.
51. James River filed the Form E with the Commission in connection with the *ETA Order*. Applicant Exhibit 6.
52. Rasier-PA proposes to provide primary insurance coverage for all vehicles operating on the platform from the time the App is on and an operator is logged on to the system until transportation services have been completed. N.T. 514-516, 662-663. Applicant Exhibits 5 and 7.
53. Rasier-PA proposes to provide \$25,000 of first party medical benefits and \$10,000 of first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians, as required by Pennsylvania state law. N.T. 662.
54. Additionally, Rasier-PA proposes to fully comply with 75 Pa.C.S. §§ 1701—1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirement of 75 Pa.C.S. § 1711 for first party coverage of the driver of certificated vehicles. N.T. 662.
55. As to Stage 1, Rasier-PA proposes to provide coverage in the amount specified in the Commission's regulations of \$35,000, split in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident. N.T. 515.
56. For Stages 2 and 3, when the operator is conducting commercial operations, Rasier-PA proposes to provide a \$1 million of third party liability insurance at a combined single limit. N.T. 515, 565
57. Rasier-PA proposes to maintain a \$1 million in uninsured/underinsured coverage for bodily injury per incident. N.T. 515.
58. Operators are required to provide and maintain proof of registration and insurance to operate on the platform. N.T. 545, 548.

59. A lapse of the operator's vehicle registration or insurance would have no impact on the insurance coverage provided by Rasier-PA. N.T. 519 and 579.
60. During the onboarding process, Rasier-PA advises operators that their personal insurance policy may not afford coverage in connection with their use of the platform, requires operators to acknowledge this notice, recommends that they pursue questions with their personal insurance carriers, informs them of the insurance Rasier-PA provides and instructs them to furnish evidence of Rasier-PA's insurance in the event of an accident while on the platform. N.T. 535-536, 545.
61. It would be unduly burdensome for Rasier-PA to require operators to notify their personal insurance carriers, to document that notification and maintain records of it, since Rasier-PA does not propose to rely on that insurance coverage. N.T. 663-664.
62. Such a notice requirement is not customary in other uses of personal automobiles in the course business. N.T. 517, 521-523, 664; Applicant Exhibit 4.
63. Rasier-PA requires operators to possess a current, valid driver's license and be at least 21 years of age. NT. 63.
64. Rasier-PA conducts a local and national criminal background check that includes the Multi-State/Juris Criminal Records Locator and the National Sex Offender Registry database on each operator before the operator may access to the platform to receive requests for transportation. N.T. 60-61.
65. A match on the National Sex Offender Registry or a conviction that appears on a criminal background check within the past 7 years for crimes of violence, sexual abuse, felony robbery, or felony fraud, automatically and permanently disqualifies an individual from acting as an operator. N.T. 60-61.
66. Rasier-PA performs driver history reviews on each operator before the operator may access the platform to receive requests for transportation. N.T. 61-62.
67. A conviction that appears on a driving history check within the past 7 years for aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade police, or the use of a motor vehicle to commit a crime, or a conviction in the previous 3 years for driving with a suspended or revoked license, automatically disqualifies an individual from acting as an operator. N.T. 61-62.
68. Rasier-PA has a zero tolerance policy on the use of drugs or alcohol while an operator is providing transportation services. N.T. 62.
69. Notice of this zero tolerance policy is maintained on its website, along with procedures to report a complaint about an operator who the rider suspects was under the influence of drugs or alcohol during the course of the ride. N.T. 62.
70. Rasier-PA immediately suspends an operator upon receive of such a passenger complaint and the suspension lasts the duration of Rasier-PA's investigation. N.T. 62.
71. If Rasier-PA concludes that the operator was under the influence of drugs or alcohol while operating on the platform, the operator will be deactivated from the system. N.T. 62.
72. Rasier-PA deactivates operators from the platform for misconduct, including accepting a street hail, fraud, lapses in insurance, and for failure to provide updated insurance and vehicle registration information. N.T. 267, 308, 519, 650.

73. Rasier-PA requires all Pennsylvania vehicles operated on the platform to undergo and pass an annual and comprehensive safety inspection, as required by the Commission's regulations at 52 Pa. Code §§ 29.402 and 29.405. N.T. 65.
74. Such inspection must be performed by an official inspection station and comply with Pennsylvania vehicle laws and regulations at 75 Pa. C.S. Chapter 47 and 67 Pa. Code §§ 175.61-175.80, including but not limited to suspension and steering components; braking systems; tires and wheels; lighting and electrical systems; and horns and warning devices. N.T. 65.
75. Rasier-PA is using vehicle markings as required by the *ETA Order*. N.T. 117, 267.
76. Rasier-PA requires that vehicles be no more than 8 years old and that eligible vehicles include street-legal coupes, sedans, or light duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles and pickup trucks. N.T. 64.
77. Rasier-PA further requires that vehicles be in a condition that meets or exceeds the standards set forth in 52 Pa. Code § 29.403, including seats in working order; vehicles in clean and sanitary condition; factory type heaters in working order; clean trunk compartments suitable for carrying luggage; exteriors free of large dents or gouges; four matching wheel covers; and operative air conditioning. N.T. 64.
78. Rasier-PA is limiting vehicle odometer readings to 100,000 miles in compliance with the *ETA Order*. N.T. 64.
79. Odometer readings are not necessary to ensure the quality of the vehicles that are used. N.T. 64.
80. When Rasier-PA receives a complaint from a customer, it investigates the issue and timely responds to the customer. N.T. 65.

Appendix B: Proposed Conclusions of Law

Docket No. A-2014-2416127
(Allegheny County Application)

1. The proposed ridesharing network service constitutes experimental service under Section 29.352 of the Commission's regulations, 52 Pa. Code § 29.352.
2. The proposed service will fulfill a useful public purpose, be responsive to public need or demand, as required by Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a).
3. Rasier-PA possesses the necessary fitness to provide the proposed service as required the Commission's policy statement at 52 Pa. Code § 41.14(b).
4. Rasier-PA's insurance proposal fulfills the requirements of the Section 32.11 of the Commission's regulations, 52 Pa. Code § 32.11.
5. Rasier-PA's proposal complies with the driver integrity requirements set forth in the Commission's regulations at 52 Pa. Code §§ 29.502-29.507.
6. Rasier-PA's proposal complies with the vehicle safety requirements set forth in the Commission's regulations at 52 Pa. Code §§ 29.402 and 29.405.
7. The Commission does not have jurisdiction over private contracts, including the software licensing agreement that users sign to use the App.
8. Rasier-PA's proposal to require users to have either a credit card or a bank account, and to have either access to the Internet or a smartphone or a tablet, is not an unreasonable basis upon which to provide service within the meaning of Section 1304 of the Public Utility Code, 66 Pa.C.S. § 1304.

**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

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Dated this 15th day of September, 2014.



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