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October 10, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, Pennsylvania
Docket No. A-2014-2416127

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing the Exceptions of Rasier-PA LLC to Recommended Decision 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 :

**EXCEPTIONS OF RASIER PA LLC
TO RECOMMENDED DECISION**

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Dated: October 10, 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

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

² N.T. 165.

³ N.T. 165.

By these Exceptions, Rasier-PA LLC (“Rasier-PA”) urges the Commission to reverse the Recommended Decision (“R.D.”) issued by the Administrative Law Judges (“ALJs”) on September 25, 2014, which completely ignores the compelling evidence of a critical need for the proposed service in Allegheny County and Rasier-PA’s fitness to provide this service. Rasier-PA further requests that the Commission adopt an Order approving the application filed by Rasier-PA on April 14, 2014 to operate an experimental ridesharing network service between points in Allegheny County, Pennsylvania. Through such approval, the Commission will fill the transportation void in Allegheny County and ensure that the riding public continues to have access to this safe, affordable and reliable transportation option. 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.

Rasier-PA incorporates herein by reference its Main Brief filed in this proceeding on September 15, 2014, which fully explains the immediate need for the proposed service and Rasier-PA’s fitness to provide ridesharing services. While Rasier-PA is confident that its Main Brief and the evidentiary record in this Allegheny County proceeding demonstrate that approval of this application is necessary and proper for the public interest, Rasier-PA also incorporates herein by reference its Exceptions filed on October 14, 2014 to the R.D. served on September 25, 2014 in the Statewide application proceeding.⁴ The Exceptions to the R.D. in the Statewide application proceeding offer additional details concerning Rasier-PA’s fitness and other issues regarding the application and proposed service that are equally applicable here.

⁴ *Application of Rasier-PA LLC for a Certificate of Public Convenience to Operate Experimental Ride-Sharing Network Service Between Points in the Commonwealth of Pennsylvania (Excluding Designated Counties)*, Docket No. A-2014-2424608 (“Statewide application proceeding”).

II. SUMMARY OF EXCEPTIONS

The Commission should reverse the R.D. because it completely ignores compelling evidence of a critical need for the ridesharing in Allegheny County and Rasier-PA's fitness to provide the proposed service. Further, the Commission should adopt an Order approving the application so that the riding public in Allegheny County can continue to have access to this safe, affordable and reliable transportation option. Particularly in view of the immediate need that exists for the proposed service and the overall benefits of ridesharing to the public, outright dismissal of the application without a consideration of its merits is wholly inappropriate.

Further, it is wrong to penalize Rasier-PA, its operators and the riding public in Allegheny County for exercising its legal rights to guard against the disclosure of its highly proprietary trip data to the government, its competitors and possibly the public, particularly when that information is completely irrelevant to the pending proceeding. Of particular concern to Rasier-PA regarding written disclosure of this proprietary data is the broad scope of Pennsylvania's Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 ("*RTK Law*"), which creates a rebuttable presumption that records supplied to a Commonwealth agency are public records, and the inevitable request for such information. Even when information is provided to a Commonwealth agency on a proprietary basis, there is no guarantee that it will be protected as such.

Finally, a review of the Commission's regulations and decisions cited by the R.D. in support of outright dismissal of the application demonstrate that the conduct of Rasier-PA in raising valid legal objections to the production of proprietary and irrelevant data is hardly indicative of behavior that obstructed the orderly conduct of the proceeding. This is especially true when the parties were in no way prejudiced, and have in fact not claimed otherwise, and

Rasier-PA had no meaningful remedies available other than objecting to production of this information at the hearing.

III. EXCEPTIONS

A. Exception No. 1: The R.D. should be reversed because it completely ignores the compelling evidence of a critical need for ridesharing in Allegheny County and Rasier-PA's fitness to provide the proposed service.

The Commission should reverse the R.D. because it completely ignores compelling evidence of a critical need for ridesharing in Allegheny County and Rasier-PA's fitness to provide the proposed service. Further, the Commission should adopt an Order approving the application so that the riding public in Allegheny County can continue to have access to this safe, affordable and reliable transportation option. Particularly in view of the immediate need that exists for the proposed service and the overall benefits of ridesharing to the public, outright dismissal of the application without a consideration of its merits is wholly inappropriate.

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.⁵

⁵ N.T. 36-37. *See also* Applicant Exhibit 1, page 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.⁶

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."⁷

Indeed, the Commission has recognized the immediate need for ridesharing services in Allegheny County in approving the emergency temporary authority ("ETA") application filed by 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."⁸ Further, the Commission found "that the introduction of the new App-based transportation service in Allegheny County will provide consumers with another competitive

⁶ N.T. 165.

⁷ N.T. 165.

⁸ *ETA Order* at 13.

alternative to traditional call and demand service that can provide a wider ranging, faster and more user-friendly scheduling of transportation services.”⁹

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.¹⁰

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 the 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.

B. Exception No. 2: The R.D. should be reversed because outright dismissal of the application is not warranted for failure to comply with an Interim Order of the Administrative Law Judges that sought the production of highly proprietary information that is irrelevant to this proceeding. (Conclusions of Law 1 and 2).

It is inappropriate to penalize Rasier-PA, its operators and the riding public in Allegheny County for exercising its legal rights to guard against the disclosure of its highly proprietary trip data to the government, its competitors and possibly the public, particularly when that

⁹ *ETA Order* at 13.

¹⁰ N.T. 66-67, 70 and 74.

information is wholly irrelevant to the pending proceeding. Of particular concern to Rasier-PA regarding written disclosure of this proprietary data is the broad scope of Pennsylvania's *RTK Law*, which creates a rebuttable presumption that records supplied to a Commonwealth agency are public records, and the inevitable request for such information. Even when information is provided to a Commonwealth agency on a proprietary basis, there is no guarantee that it will be protected as such. To the contrary, neither Rasier-PA nor the Commission would ultimately be able to ensure the confidential treatment of this information. In fact, this information was provided under a temporary protective order in a similar application proceeding, and is now the subject of a petition seeking its release to the public.¹¹

While this proceeding was pending, the ALJs issued an Interim Order dated July 31, 2014 ("*July 31 Interim Order*") directing the parties to present evidence on issues enumerated by the Commission in its July 28, 2014 Secretarial Letter ("*July 28 Secretarial Letter*"). The Commission's *July 28 Secretarial Letter* had been issued in a proceeding that was initiated by the filing of a complaint against Uber Technologies, Inc. ("UTI") by the Commission's Bureau of Investigation and Enforcement ("I&E"). In the complaint proceeding, the parties were directed by the *July 28 Secretarial Letter* to address the following questions:

- (1) The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
 - (a) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
 - (b) From the receipt of the cease and desist letter from the Commission's Bureau of Technical Utility Services dated July 6, 2012 to June 5, 2014;
 - (c) From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
 - (d) From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.

¹¹ See *Application of Lyft, Inc.*, Docket No. 2014-2415045.

- (2) Should there be a finding that Uber's conduct in any one or all of the periods in question (1) above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
- (3) Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negated the need for the proposed service and/or the fitness of the Applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

The complaint proceeding is still pending before the Commission, and no determination has been made as to whether the licensing of a software product by UTI constitutes unlawful brokering under Section 2505 of the Public Utility Code, 66 Pa.C.S. § 2505. Despite the pendency of the complaint and the lack of an adjudication, the ALJs issued the *July 31 Interim Order* noting their belief that this information is relevant to consideration of the pending application and directing the parties to present evidence on these issues.

At the appropriate time in the hearing on August 18, 2014 when Rasier-PA's witness was asked questions pertaining to the sought-after trip data, Rasier-PA's counsel objected on the basis that the information was highly confidential and proprietary and irrelevant to the application proceeding.¹² At the direction of the ALJs, Rasier-PA's counsel appeared the following morning and provided legal support for the objections.¹³ At that time, Rasier-PA objected to the disclosure of data on trips arranged through the mobile application ("App") on three grounds: 1) it constitutes a trade secret, the market value of which would diminish if it is disclosed and which disclosure would be competitively harmful to its business; 2) the Fifth Amendment of the United States Constitution protects against disclosure of this information; and 3) trip data is irrelevant to the pending application proceeding, and any probative value of this evidence is outweighed by the unfair prejudice to Rasier-PA of producing it in this context. In

¹² N.T. 251-252.

¹³ N.T. 320-323.

raising these objections, Rasier-PA stressed the broad scope of the *RTK Law* and the inability of the Commission to protect proprietary data from public disclosure. Rasier-PA did not provide the data, as its witness was not authorized to disclose the information in that setting.¹⁴

It is well established in Pennsylvania that a trade secret consists of a compilation of information which is used in one's business, and which gives an advantage over competitors who do not know or use it. *See Sperry Rand Corp. v. Pentronix, Inc.*, 311 F. Supp. 910 (1970), 1970 U.S. Dist. LEXIS 12473; *see also* Restatement of Torts, Section 757. The crucial indicia for determining whether certain information constitutes a trade secret are "substantial secrecy and competitive value to the owner." *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 389 Pa. Super. 219, 566 A.2d 1214, 1228 (1989).

The trip data that is the subject of the *July 31 Interim Order* is information that Rasier-PA has spent considerable time and effort to collect. As such, it is a valuable asset that belongs to Rasier-PA, the disclosure of which would diminish its market value. Particularly since data provided in response to the *July 31 Interim Order* would reveal the number of trips provided through the App in a very limited geographic area of Allegheny County over distinct relatively short time periods, it would be possible for Rasier-PA's competitors to determine the size of the business and how lucrative it is. For instance, disclosure of data collected about the number of rides provided through the App during a 4-week period in Allegheny County (June 5, 2014 through July 1, 2014), only months after the launch of ridesharing services in the region and in the midst of the I&E proceedings referenced above, would be very revealing about the success of this highly competitive business.

Comparisons that have been made between the sought-after trip data and the daily log sheets that call and demand carriers are required to complete under the Commission's regulations

¹⁴ N.T. 332.

at 52 Pa. Code § 29.313(c) are completely off base. Daily log sheets do not equate to a compilation of trip data showing the number of rides that were provided by a start-up business in a narrow geographic region over distinct relatively short time periods. Rasier-PA uses this information to make decisions about growth or expansion of the business. If it ends up in the hands of competitors, it could be used as a basis for allocating their resources differently or changing their business models in a way that is injurious to Rasier-PA's business. Due to the very nature of the proposed service being new and innovative, thereby qualifying for classification as experimental service, data about rides arranged through the App is commercially sensitive and its disclosure would be harmful to Rasier-PA.

The Fifth and Fourteenth Amendments prohibit the government from depriving anyone of "property, without due process of law," or taking property "for public use, without just compensation." U.S. Const. Amend V; U.S. Const. Amend. XIV. The United States Supreme Court has long recognized that the Fifth Amendment protects intangible property. *See The West River Bridge Company v. Dix et al.*, 77 U.S. 507, 533 (1848) (no meaningful distinction between real property and "incorporeal property" for the purposes of the takings clause.) Specifically, trade secrets have been recognized as property under the Fifth Amendment. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984). The regulatory taking of a trade secret causes the value of the asset to diminish, which results in awards of damages in the form of compensation. *See Gully v. Sw. Bell Tel. Co.*, 774 F.2d 1287, 1293 (5th Cir. 1985).

Moreover, Rasier-PA is protected by the Fifth Amendment of the United States Constitution from disclosing this information. The United State Supreme Court has found that the Fifth Amendment privilege may be asserted in an administrative proceeding and protects against disclosures that the party reasonably believes could be used in a criminal prosecution or

could lead to other evidence that might be so used. *See Kastigar et al. v. United States*, 406 U.S. 441 (1972). Section 3310 of the Public Utility Code (“Code”) provides that any person or corporation operating as a broker, without a license issued by the Commission “shall be guilty of a summary offense, and any subsequent offense by such person or corporation shall constitute a misdemeanor of the third degree.” 66 Pa.C.S. § 3310. Given the allegations in the pending complaint about unlawful brokering, which have not been proven and the Commission has not yet adjudicated, disclosure of information about rides that were arranged through the App could result in prosecution under Code Section 3310 and therefore is protected by the Fifth Amendment.

Since corporations can only act through their agents, officers and agents of a corporation can claim the benefits afforded by the Fifth Amendment, even when acting on behalf of the corporation. *Kohn v. State*, 336 N.W. 2d 292, 298-99 (Minn. 1983). Moreover, if a corporation can be charged with criminal offenses for violations of Code Section 3310, it makes sense that they or their agents can assert the Fifth Amendment privilege. This analysis is bolstered by the 2010 United States Supreme Court decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), in which the Court held for the first time that a corporation enjoys First Amendment rights of association and free speech.

Finally, the trip data is irrelevant to the pending application. Since the Commission has not yet adjudicated the complaint, the trip data is not evidence of any prior unauthorized operations that may be relied upon in this proceeding. The Commission knew about the application proceeding when issuing the *July 28 Secretarial Letter* and did not require it to be addressed here.¹⁵ Any probative value of the evidence is heavily outweighed by the danger of

¹⁵ As to the Complaint proceeding, UTI is exploring avenues through which this information may be shared with Commissioners only through an approach that does not leave any documents behind that may later be the subject of

unfair prejudice to Rasier-PA, as outlined above, and it is therefore inadmissible in the application proceeding. 52 Pa. Code § 5.401(b)(2)(i). During the hearing, Rasier-PA admitted that an affiliate continued providing services after the issuance of a cease and desist order by the Commission.¹⁶ Therefore, to the extent that the parties wished to argue that Rasier-PA lacks the propensity to operate legally and safely, they had evidence in the record upon which to do that. The number of trips that were provided by Rasier-PA's affiliate was not needed for that argument.

The R.D. erroneously claims that Rasier-PA “did not provide any justification for failing to file a motion for protective order.” R.D. at p. 7. To the contrary, Rasier-PA fully explained its reason for not seeking a protective order - namely, Pennsylvania's *RTK Law*. This continues to be a serious concern since written disclosure of this information, even subject to a protective order, may eventually lead to public disclosure of this highly proprietary information in a way that is harmful to Rasier-PA. The sweeping amendments to the *RTK Law* that went into effect on January 1, 2009 were designed to promote access to official government information in order to prohibit secrets and establish a rebuttable presumption that documents in the possession of a Commonwealth agency are public records. *See Commonwealth of Pennsylvania, Pennsylvania Gaming Control Board v. Office of Open Records*, 48 A.3d 503, 2012 Pa. Commw. LEXIS 174 (2012); 65 P.S. § 67.305. The burden of proving that a record is exempt from public access is on the Commonwealth agency. 65 P.S. § 67.708(a)(1).

A “record” is broadly defined by the *RTK Law* to include “information” that is created in “connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. Although

a request under the *RTK Law*. Due to the statutory prohibitions in Code Section 334(c) against ex parte communications during a contested on-the-record proceeding, UTI has not yet pursued any of those avenues.

¹⁶ N.T. 81-84.

the *RTK Law* also contains several exemptions to the definition of “record,” including two that could be applicable here – namely a record that constitutes or reveals a trade secret or confidential proprietary information (65 P.S. § 67.708(b)(11)) and a record relating to a noncriminal investigation (65 P.S. § 67.708(b)(17)), those exemptions would protect Rasier-PA only if the Commission agrees that they are applicable and the Pennsylvania Office of Open Records or appellate courts ultimately agree.

The language of the *RTK Law* and its recent application by the Office of Open Records demonstrate that even providing information on a confidential basis subject to a protective order is not sufficient to guard against disclosure of that information. To have any hope of ultimately protecting information marked as proprietary from disclosure by the Commission, Rasier-PA would have five business days after receiving notice of the *RTK Law* request to “provide input on the release of the record.” 65 P.S. § 67.707(b). The Commission would not be bound by that input, and even if the Commission would decline to produce the information on the basis of its confidentiality, the Office of Open Records could require its disclosure. *See In the Matter of Scott Kraus and the Morning Call v. Pennsylvania Public Utility Commission*, Docket No. AP 2013-1986 (documents submitted confidentially as part of a Commission staff investigation were ordered to be publicly released).¹⁷

The R.D. faultily takes issue with the failure of Rasier-PA to provide advance notice of its intention to object to production of the trip data. R.D. at p. 7. As Rasier-PA has explained, no Commission regulation or any order issued in this proceeding required it to disclose prior to the hearing its intent to forego production of this information. Moreover, the parties were not in any way prejudiced by a lack of advance notice. None of the protestants served any discovery on

¹⁷ Decision is available on Office of Open Records website. <http://dced.state.pa.us/open-records/final-determinations/FileHandler.ashx?FileID=12318>. Decision is currently on appeal in *Pennsylvania Public Utility Commission v. Scott Kraus/The Morning Call*, 2254 C.D. 2013.

Rasier-PA prior to the evidentiary hearing on August 18, 2014. Rasier-PA's witness did not provide the information during direct testimony. Attorneys for three protestants conducted lengthy cross-examination without asking for this information. It was not until the fourth attorney conducting cross-examination asked for it that it became incumbent upon Rasier-PA to object and state its grounds for not producing the data.¹⁸

No party has claimed that it somehow relied on an assumption that this data would be produced by Rasier-PA to forego calling a witness of their own. Since the number of trips was solely within the possession of Rasier-PA, the parties could not have prepared any differently even if they had known in advance that Rasier-PA did not intend to supply the information. In fact, Rasier-PA notes that the motion to dismiss the application was not made at this docket. The motion to dismiss was offered by Ms. Justine Pate on behalf of Keystone Cab Service Inc., EZ Taxi LLC, United Cab LLC, and Good Cab LLC¹⁹, who are protestants only in the Statewide application proceeding. Although the protestants in the Allegheny County application proceeding joined a later motion for summary judgment offered by Ms. Pate,²⁰ they did not join in the motion to dismiss. Absent any claim by the parties in this proceeding that they were somehow harmed by Rasier-PA's failure to provide the trip data, it would be completely improper to dismiss the Allegheny County application.

The R.D. also unfairly criticizes Rasier-PA for not seeking interlocutory review of the *July 31 Interim Order*, suggesting that there was a public meeting scheduled between that date and the final hearing in this proceeding. R.D. at p. 9, footnote 18. While in hindsight that is true, the R.D. neglects to mention that as of July 31, 2014, the hearings on the application were scheduled for August 18-19, 2014, with the next public meeting not scheduled until August 21,

¹⁸ N.T. 251.

¹⁹ N.T. 330, 333, 335.

²⁰ N.T. 338-339.

2014. At that time, Rasier-PA could not have known that: (i) on August 15, 2014, between public meetings, the Commission would issue an order reversing the ALJs' Initial Decision and permitting the Insurance Federation of Pennsylvania, Inc. ("Insurance Federation") to participate in the hearing; (ii) the Insurance Federation would not be available on the scheduled hearing dates; and (iii) a third hearing date - *solely to address insurance issues* - would be scheduled after the August 21, 2014 public meeting. In fact, the ALJs had issued orders denying requests for continuances of the August 18-19, 2014 hearings, giving Rasier-PA every reason to believe that hearings would be concluded prior to August 21, 2014 and to determine that there was no opportunity for interlocutory review.

The R.D. further inappropriately suggests that Rasier-PA's approach to the *July 31 Interim Order* renders it "highly unlikely that the Applicant intends to comply with the Commission's regulatory authority." R.D. at p. 9, footnote 19. Raising valid legal objections to the *July 31 Interim Order* is hardly indicative of Rasier-PA's present or future compliance patterns. To the contrary, the record in this proceeding is replete with examples of Rasier-PA's propensity to operate legally and safely, as follows:

- Obtaining a brokerage license in response to concerns raised by Commission staff about ridesharing services²¹
- Filing the pending application and the ETA application when advised by Commission staff that the brokerage license would not cover these operations²²
- Implementing robust driver integrity requirements and automatically disqualifying individuals who would pose a threat to the safety of the riding public²³
- Requiring vehicles to meet or exceed Pennsylvania inspection standards²⁴

²¹ N.T. 83.

²² N.T. 83.

²³ N.T. 63.

²⁴ 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*²⁵
- Complying with the *ETA Order* to use trade dress to mark the vehicles so that Commission enforcement officers can identify them²⁶
- Relying on rider feedback to ensure accountability of drivers as to safe driving and the condition of vehicles²⁷
- Maintaining “best in class” \$1 million of liability insurance coverage during a trip since before entering Pennsylvania to protect passengers²⁸
- Modifying liability insurance coverage to be compliant with the *ETA Order*²⁹
- Revising its receipt to include Commission contact information for consumers to submit complaints about the service³⁰

The R.D. bases the dismissal of the application on Section 5.245 of the Commission’s regulations, 52 Pa. Code § 5.245, and cites ALJ or Commission decisions in support of its recommendation. Section 5.245 provides that if the actions of a party “obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the...application.” 52 Pa. Code § 5.245. Neither Section 5.245 nor the decisions cited by the ALJs, which involve wholly different scenarios than were present here, support dismissal of the application without a consideration of the merits.

In *Nippes v. PECO Energy Company*, Docket No. C-2013-2363324 (Initial Decision dated August 15, 2013), the complainant engaged in inappropriate and hostile behavior during the hearing and was warned that another outburst would result in termination of the hearing. When the complainant responded, “Guess what, b#*\$@, it’s over,” ALJ Susan Colwell ended

²⁵ N.T. 64.

²⁶ N.T. 117, 267.

²⁷ N.T. 269.

²⁸ N.T. 565.

²⁹ Applicant Exhibit 6.

³⁰ N.T. 129.

the hearing. Clearly, that is the type of behavior that obstructs the orderly conduct of the proceeding, as envisioned by Section 5.245 of the Commission's regulations, warranting sanctions. In *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Order adopted on June 22, 2006), the complainant failed to follow several directives of the ALJ requiring it to hire an attorney to represent it in a hearing. Because the complainant did not secure legal counsel, the Commission dismissed the complaint. The applicant in *Application of Pickups Moving Company, LLC*, Docket No. A-2013-2372121 (Initial Decision dated January 28, 2014), completely failed to respond to any of the ALJ's or other parties' communications. No attorney ever entered an appearance on behalf of the applicant. As a result, the complaint was dismissed.

In this proceeding, Rasier-PA fully participated in the hearing through counsel, presented two witnesses who offered testimony in support of the application and introduced seven exhibits into the record. Further, given that no meaningful remedies were available to Rasier-PA for challenging the *July 31 Interim Order*, since a protective order – even if granted – would not necessarily protect the proprietary trade secrets from later disclosure to the public, and no public meeting was scheduled during the time between issuance of the order and the scheduled hearings to permit interlocutory review, Rasier-PA appropriately elected to object to the questions when they were raised at the hearing. Rasier-PA offered valid legal grounds of those objections, and no party was prejudiced by the lack of advance notice or by the failure of Rasier-PA to furnish the proprietary trip data. Therefore, the sanction of outright dismissal of the application is unwarranted and should be rejected by the Commission.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, Rasier-PA LLC respectfully requests that the Commission grant these Exceptions, reverse the Recommended Decision of the Administrative Law Judges, and adopt an Order approving the application filed on April 14, 2014 to operate an experimental ridesharing network service between points in Allegheny County, Pennsylvania.

Respectfully submitted,



Dated October 10, 2014

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Attorneys for Rasier-PA LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated this 10th day of October, 2014.



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