**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Rasier, PA, LLC : Docket No. A-2014-2416127
Docket No. A-2014-2416128

# REPLY OF THE INSURANCE FEDERATION OF PENNSYLVANIA TO THE EXCEPTIONS OF RASIER PA, LLC

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## INTRODUCTION

Rasier-PA LLC ("Rasier") has filed Exceptions to the Administrative Law Judges' ("ALJs") September 25, 2014 Decision recommending that its Application be denied. Rasier seeks a reversal of the ALJs' Decision and an Order approving its Application.

The Insurance Federation files this Reply, recommending the Commission adopt the ALJs' Decision and order Rasier to submit a revised Application addressing the deficiencies outlined in that Decision before continuing its operations in this Commonwealth. As the Federation's interest in Rasier's Application is with its insurance coverage and ramifications, this Reply will focus on Raiser's fourth Exception. The insurance issues Rasier includes – and those it ignores - in this Exception were largely addressed in the Federation's Main Brief (and in the ALJs' Decision), so the Federation incorporates that brief here.

## SUMMARY OF REPLY

The best riposte to Rasier's Exceptions is the adage, "you had to be there."

Throughout this proceeding, Rasier has been reluctant, incomplete, evasive, obtuse and disingenuous in describing its insurance coverage and its communications with its drivers about that coverage and related insurance issues. That holds true in its Application; it

holds true in its Response to the Interrogatories filed by the Insurance Federation; it holds true in its testimony before the ALJs; and it holds true in its brief filed with the ALJs – all of which led to their Decision recommending Rasier's Application be denied.

Rasier would have the Commission ignore all that. It hasn't filed Exceptions to the Judges' determinations so much as revisions to its Application and testimony. And on several key issues, it doesn't address the concerns of the ALJs so much as ignore them. Rasier relies on its hype to mask the failure of its Application to adequately protect its drivers and passengers. It wants to the Commission's approval without establishing those protections, suggesting its services are so compelling and needed that the Commission should allow those protections to be addressed later or not at all.

Rasier doesn't argue that the protections set forth by the ALJs are excessive or misdirected – just that it doesn't want to provide them, or that it already sort of, kind of does, or will if you trust it and let it answer the questions it wants rather than what the law asks of it. The ALJs saw through this: At each stage of this proceeding, the closer the examination of Rasier's Application, the more glaring its flaws. Rasier's Exceptions diminish the thoroughness shown by the ALJs – the ones who were there. The Commission should not: It should embrace the ALJs' Decision as a fair means for Rasier to enter this market.

## REPLY

> "The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters."

That is Section 512 of the Public Utility Code, 66 Pa.C.S.A. Section 512, and it sets forth the general objective and authority for the Commission to require insurance. It was the guiding principle in the ALJs' decision on Rasier's insurance and on Rasier's Application generally. Contrary to Rasier's characterization, the ALJs were enthused about its service – their decision begins by saying "transportation network company service generally is of great potential use to the public." They found, however, that Rasier didn't satisfy Section 512: "[T]his Applicant did not sustain its burden of demonstrating that it is also committed to protecting the public – both drivers and passengers."

Inexplicably but tellingly, Rasier has never cited Section 512 – not in its Main Brief, and not in these Exceptions, despite the ALJs' reliance on it. It doesn't just want the Commission to grant exceptions to the ALJs' Decision; it wants the Commission to grant exceptions to Section 512's statutory requirement of public protection.

1. **The insurance proposed by Rasier is inadequate; the time to evaluate this is now.**

In its Exceptions, Raiser argues "the Commission will have the ability to fully evaluate Rasier-PA's compliance with conditions relating to insurance coverage following approval of the application (p. 32-33)."

That is ludicrous, certainly if the goal is to protect the public. Proper insurance coverage – and proper disclosure and training of insurance to Rasier's drivers – is a key component in protecting the public, not a minor detail to be handled by looking at a form filed by a third party down the road. As the ALJs recognized, this needs to be examined before, not after, any Application is approved: The Commission should adopt a "trust but verify" stance in examining Rasier's proposed insurance.

Everything from the previous stages in this proceeding calls for this approach. First, Rasier has significantly altered its insurance proposal from its original Application, but without the precision of doing so in writing, especially during the "on app" stage (its witness who outlined its new proposal is best described as wordy but wobbly). Second, the documents Rasier did share – its insurance coverage for when a driver is "on match" and "on ride" – were only produced the day of the hearing, hardly adequate time for examination; even then, they showed serious gaps, as with not applying in the event the driver has a commercial policy. Third, Rasier's other agreements and contracts with its drivers may supersede whatever insurance Rasier may provide. Those gaps and questions were outlined in the Federation's Main Brief at pp. 15-18 and in the ALJs'

Decision, both in its Findings of Fact beginning at p. 20 and its Discussion beginning at p. 36.

Rasier's Exceptions don't rebut this. Instead, it asks the Commission to take a "what, me worry" posture and rely on a Form E certificate to be filed by its insurer after its Application is approved.

The Commission should reject this and affirm the ALJs' Decision. This is particularly important given the questions and oddities surrounding Rasier's insurer and the relation between the two. James River is a surplus lines carrier not covered by the Guaranty Fund, and with limited experience in auto insurance; from what Rasier disclosed, James River doesn't even appear to be the one handling the claims, at least in the first instance.

Rasier's Exceptions essentially ask for permission to satisfy its statutorily-required insurance on the fly, to comply with any rules as they emerge. That is the opposite of the public protection intended by Section 512's insurance requirement: Insurance, by design and definition, is meant to provide certainty in advance and should be evaluated on that basis. The ALJs recognized this; so should the Commission.

**2. Rasier's insurance notice to its drivers is inadequate; its insurance training of its drivers nonexistent.**

**Rasier's insurance notice:** Rasier suggests in its Exceptions that it gives comprehensive notification of insurance issues and ramifications to its drivers. Again, you had to be

there: For all its talk of its drivers as "partners," Rasier has shown no concern with educating them about their personal insurance exposure. It steadfastly refuses to give its drivers notice of anything meaningful on their own potential insurance issues; even the minimal and misleading notice it outlined at the hearing was never set forth in writing, suggesting it will easily be lost in the blur and fine print of other forms. And as was made apparent at the hearing, Rasier doesn't give its drivers – generally neophytes in the world of part-time taxi driving and the insurance issues it presents - much information on the insurance coverage it does provide.

Rasier's Exceptions reveal rather than rebut its disdain for meaningful notification to its drivers. It describes a requirement that it instruct its drivers to notify their personal auto insurers and maintain records of such notification as "the proposal advanced by the Insurance Federation (p. 36)." It goes on to say this would be unduly burdensome and serve no purpose, since it won't rely on the driver's personal auto coverage.

This requirement didn't come from the Federation. It came from the Commission in its July 24 ETA Order, and is one Rasier purportedly accepted but apparently ignores. It is hardly an undue burden: It is consistent with Rasier's plan to monitor its drivers' personal insurance. And while it may serve no purpose for Rasier, it serves an enormous purpose for its drivers and the public: The notice is essential to ensure the driver does not jeopardize his or her own coverage, or car loan or lease, and does not end up with personal or family financial exposure, or gaps in the insurance the public will need in the event of an accident.

**Rasier's insurance training:** However limited and ill-defined Rasier's insurance notice to its drivers is, its insurance training of its drivers is worse: It is veritably non-existent. Rasier's Exceptions suggest it has a formal program on how drivers are to handle insurance issues in the event of an accident, with institutional training of its drivers on this. The record from the hearing shows the opposite: Rasier offered nothing in writing, and its verbal descriptions came reluctantly and vaguely on cross-examination, without any substantiation.

As detailed in the Federation's Main Brief at pp. 21-24, and in the ALJs' Decision at pp. 38-39, a well-informed driver – both on insurance exposure and how to inform passengers and others about his or her Rasier-provided insurance in the event of an accident – is integral to the public's protection. Rasier's Exceptions don't outline an information and training plan doing this anymore than Rasier did in the earlier stages. The irony is that Rasier somewhat concedes the importance of insurance information and training in its Exceptions. It just doesn't provide it, certainly not in a verifiable or institutional way.

### 3. Rasier's conduct shows a lack of fitness that necessitates the rejection of these Exceptions.

Rasier contends it has "a propensity to operate legally" that should justify the Commission's approval of its Application despite so many unanswered questions – whether about insurance or generally.

Its conduct in this proceeding, and its conduct under the Commission's ETA Order, shows the opposite: Raiser has been evasive throughout, whether in producing documents or answering interrogatories, or in answering questions while on the stand.

The Insurance Federation outlined the disdain Rasier has shown toward complying with the Commission's insurance requirements in its Main Brief at pp. 24-27. Rasier has never been an earnest applicant working with all parties to resolve concerns; in fact, it has taken great pride in being a contrarian, boasting it will disregard legal requirements it feels are outmoded until they are changed to its liking.

That has been true in its general behavior in Pennsylvania and across the country, and it has been revealed in this proceeding. Rasier has steadfastly refused to accept a fundamental principle of being a regulated entity – that it comply with regulations and a regulator's orders, and that it answer regulatory concerns and issues in a forthright and timely manner. Raiser's renegade approach was unmasked in this proceeding, as it suggested it isn't complying with the Commission's ETA Order, either in the insurance it provides or the insurance-related notice it is to give its drivers.

Rasier's apparent philosophy toward the Commission's regulation is that nothing is illegal unless prosecuted, no matter how blatant the violation. In the world of insurance regulation, this is called "bad faith." In any world, it is hardly a showing of "a propensity to operate legally."

**4. The ALJs' Decision sets forth public protection standards that are reasonable and should be clearly satisfied before any Application is approved.**

Rasier doesn't seem to dispute the reasonableness of the public protection standards the ALJs set forth in their Decision – with the exception of its whining about the "unduly burdensome" notice requirement the Commission established in its ETA Order. Instead, its Exceptions suggest it is ready and willing to comply with those standards.

One can always hope. But more than that, the Commission can and should require much more than the vague and belated assurances of general compliance Raiser now offers:

- It should require that Rasier clarify what insurance coverage it will provide, and what its relation with its surplus lines carrier is (starting with who handles claims and how reserves are set).
- It should require that Raiser reconcile its other agreements and contracts with its drivers and the insurance coverage it provides.
- It should require that Rasier document a formal program of educating its drivers on their insurance issues, including notification of their personal auto insurers, and on the handling of claims.

Rasier for the first time suggests it is willing to do this. If so, great. The Commission should require that it demonstrate this in an Application, not these Exceptions; given Rasier's conduct to date, "trust but verify" is not a cliché.

## CONCLUSION

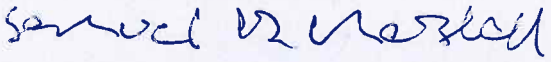
On October 7, Rasier held a rally in the Capitol Rotunda, seeking legislative support to overturn the ALJs' Decision. It was well-packaged, with brightly-colored tee shirts and professional videos. Most impressive was a wall of boxes, each one with hand-written labels saying "1,000 petitions" asking for legislation that would allow Rasier to operate. At the close of the rally, Rasier staffers were lifting the boxes, three in each hand. That wasn't a display of strength – it was because the boxes were empty, which wasn't lost on the General Assembly as it declined to act on Rasier's requests in the closing days of this legislative session.

The Commission should be equally wary of Rasier's hollow promises here. The ALJs – who really were there, looking in Rasier's boxes – reached a clear Decision:

> The evidence demonstrates that the Applicant has failed to propose adequate insurance, education and training for Applicant's drivers, its passengers and the general public, and it leaves unanswered several crucial insurance-related issues. As such, the application fails to protect the public and must be denied, on this basis alone. (p. 41)

Rasier hasn't shown anything to the contrary in these Exceptions, just some wishful thinking and revisionist ramblings to the case it presented. The public may welcome the service Rasier provides – but it also deserves the insurance protections Section 512 provides. The Commission should affirm the ALJs' Decision and instruct Rasier to file a full and complete Application providing the public protections set forth in that Decision.

Respectfully submitted,



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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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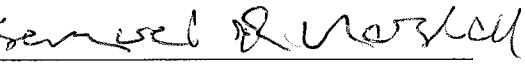

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Dated this 20th day of October, 2014, in Philadelphia, Pennsylvania