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November 3, 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 Emergency Temporary Authority to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, PADocket No. A-2014-2429993

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing the Petition of Rasier-PA LLC for Reconsideration of the Order entered on October 17, 2014 in the above-captioned matter.

If you have any questions, please feel free to contact me.

Sincerely,



Karen O. Moury

KOM/tlg
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly :
Owned Subsidiary of Uber Technologies, Inc., :
For Emergency Temporary Authority to Operate : Docket No. A-2014-2429993
An Experimental Ride-Sharing Network Service :
Between Points in Allegheny County, PA :

**PETITION OF RASIER-PA LLC FOR RECONSIDERATION
OF THE ORDER ENTERED ON OCTOBER 17, 2014**

Rasier-PA LLC (“Rasier-PA”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Petition for Reconsideration pursuant to Section 703(g) of the Public Utility Code (“Code”), 66 Pa.C.S. § 703(g), and the Commission’s regulations at 52 Pa. Code § 5.572. By this Petition, Rasier-PA seeks reconsideration of the Commission’s Order entered on October 17, 2014 (“*October 17 Order*”) in the above-captioned matter. The *October 17 Order* denied a Petition for Modification filed by Rasier-PA on October 3, 2014, which sought deletion of the insurer notification requirements contained in the Commission’s Order entered on July 24, 2014 granting Rasier-PA emergency temporary authority (“*ETA Order*”) to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania. In support of this Petition, Rasier-PA avers as follows:

I. Introduction

1. Reconsideration is warranted because in denying the Petition for Modification, the Commission overlooked or did not address several compelling arguments raised by Rasier-PA concerning the unnecessary and unduly burdensome nature of the unprecedented insurer notification requirements, which were unilaterally imposed by the *ETA Order* without statutory

authority and without finding that they are necessary for the protection of Rasier-PA's patrons and the public.

2. As a creation of the General Assembly, the Commission has only the powers conferred upon it by the legislature and as contained in the Public Utility Code, 66 Pa.C.S. §§ 101 et seq. ("Code"). Code Section 512 empowers the Commission to prescribe insurance requirements as it may deem necessary for the protection of persons or property of the patrons of motor carriers and the public. This statutory authority does not empower the Commission to require Rasier-PA to interject itself into the private contractual relationship between Rasier-PA's independent operators and their personal insurance carriers and require a notification that is unrelated to safety and protection of the public.

3. In the *ETA Order*, the Commission emphasized its "obligation to protect the safety of the traveling public" and "require compliance with reasonable driver integrity, vehicle safety and insurance requirements," while remaining "mindful that its traditional regulatory framework should be interpreted with reasonable flexibility to account for changes in technology and to accommodate a more competitive environment and its attendant public benefits." *ETA Order* at 12. However, the directives in the *ETA Order* relating to insurer notifications have no bearing on the adequacy of Rasier-PA's insurance or the overall safety and protection of the public and fail to appropriately weigh the need for this notice requirement against the critical, immediate and continuing need for innovative and competitive transportation options in Allegheny County.

4. Moreover, in a very limited discussion of the Commission's rationale, the *October 17 Order* overlooks or does not address most of Rasier-PA's arguments about these requirements and specifically: (a) makes no mention of the fact that Rasier-PA's liability

insurance policies provide primary coverage from the time the operator's smartphone application ("App") is on until the completion of transportation services; (b) fails to acknowledge the measures Rasier-PA already takes to inform operators of the status of their personal automobile insurance policies; (c) does not address the unduly burdensome nature of collecting written notifications from operators; and (d) ignores the example presented by Rasier-PA of other uses of personal automobiles in the course of business, where no such notification to the insurers is required. These compelling factors demonstrate why it is necessary to modify the *ETA Order* to delete the directives relating to insurer notifications by operators.

5. Since Rasier-PA is providing primary liability insurance coverage from the time the App is on until the completion of transportation services, and Rasier-PA is not relying on the operators' personal insurance policies to provide coverage while they are operating on the platform, it is unnecessary to require operators to provide written notifications to their personal insurance companies that they are providing ridesharing services.

6. Further, Rasier-PA already advises operators that their personal insurance policies may not provide coverage and suggests that they pose any questions about coverage to their personal insurer. These notifications, particularly given Rasier-PA's primary insurance coverage, are more than sufficient to alert operators of the need to review their policies.

7. Moreover, such a notification requirement is not customary in other uses of personal automobiles in the course of business. For instance, several industries have existed for decades, including home health care and pizza delivery, which involve use of a personal vehicle in the course of business. Notifications to personal insurers are not required in those industries, even when the personal automobile policy is relied upon to provide primary coverage.

8. Additionally, as Rasier-PA already advises operators on a number of insurance-related items and verifies that personal insurance policies of operators are in place, it is unduly burdensome, and singles out ridesharing services from other comparable industries, to require it to take the extra steps of collecting written copies of notifications from the operators and maintaining those records for several years.

9. Finally, because the notification requirement is unduly burdensome, and is not necessary to protect the public interest, imposing it on Rasier-PA is a violation of its First Amendment rights under the United States Constitution.

II. Background

10. On April 14, 2014, Rasier-PA filed an application at Docket No. A-2014-2416127 for a certificate of public convenience evidencing approval to operate an experimental ride-sharing network service between points in Allegheny County pursuant to the Commission's regulations at 52 Pa. Code § 29.352.

11. On July 2, 2014, Rasier-PA filed an application for emergency temporary authority ("ETA") to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania, pursuant to the Commission's regulations at 52 Pa. Code §3.383(c).

12. By the *ETA Order* adopted on July 24, 2014, the Commission approved the application of Rasier-PA for ETA to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania, pursuant to the Commission's regulations at 52 Pa. Code §3.383(c), subject to the filing of a Form E Certificate of Insurance and an acceptable tariff. Upon Rasier-PA's compliance with the conditions of the *ETA Order*, the Commission issued a certificate of public convenience on August 21, 2014.

13. On October 3, 2014, Rasier-PA filed a Petition for Modification of the *ETA Order*, which was limited to the directives on page 18 of the *ETA Order* requiring Rasier-PA to: a) direct operators to notify their insurer, in writing, of their intent to operate in Rasier-PA's service; and b) maintain a copy of written notifications that operators provide to their insurers for three years after termination of an operator's service. Rasier-PA contended that these directives are unduly burdensome and unnecessary, and are not customary in the insurance industry.

14. In the Petition for Modification, Rasier-PA noted its compliance with all other requirements of the *ETA Order*, including: (a) the mandate to provide primary liability insurance coverage from the time the App is on through the completion of transportation services; (b) the use of vehicles that are no more than 8 years old; (c) the use of vehicles with no more than 100,000 miles on the odometer; (d) the use of placards or distinguishing markings on the vehicles; (e) inclusion on the trip receipt of the Commission's telephone number and website for lodging a complaint; and (f) notifications to operators of the insurance coverage that Rasier-PA is providing to them.

15. The *October 17 Order*, which was adopted through notational voting and ratified at Public Meeting on October 23, 2014, denied the Petition for Modification.

III. Rasier-PA Has Met Legal Standards for Reconsideration

16. In *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa.P.U.C. 553, 559 (1982) ("*Duick*"), the Commission articulated the standards for reconsideration as follows:

[A] Petition for Reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was said that:

Parties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...

What we expect to see raised in such petitions are new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.

17. Reconsideration is warranted because in denying the Petition for Modification, the Commission overlooked or did not address several compelling arguments raised by Rasier-PA concerning the unnecessary and unduly burdensome nature of the unprecedented insurer notification requirements, which were unilaterally imposed by the *ETA Order* without statutory authority or without finding that they are necessary for the protection of Rasier-PA's patrons and the public.

18. As a creation of the General Assembly, the Commission has only the powers conferred upon it by the legislature and as contained in the Code. Code Section 512 empowers the Commission to prescribe insurance requirements as it may deem necessary for the protection of persons or property of the patrons of motor carriers and the public. This statutory authority does not empower the Commission to require Rasier-PA to interject itself into the private contractual relationship between Rasier-PA's independent operators and their personal insurance carriers and to require a notification that is unrelated to safety and protection of the public.

19. In the *ETA Order*, the Commission emphasized its "obligation to protect the safety of the traveling public" and "require compliance with reasonable driver integrity, vehicle safety and insurance requirements," while remaining "mindful that its traditional regulatory framework should be interpreted with reasonable flexibility to account for changes in technology and to accommodate a more competitive environment and its attendant public benefits." *ETA Order* at 12. However, the directives in the *ETA Order* relating to insurer notifications have no

bearing on the adequacy of Rasier-PA's insurance or the overall safety and protection of the public and fail to appropriately weigh the need for this regulatory requirement against the critical, immediate and continuing need for innovative and competitive transportation options in Allegheny County.

20. Moreover, in a very limited discussion of the Commission's rationale, the *October 17 Order* overlooks or does not address most of Rasier-PA's arguments about these requirements, and specifically (a) makes no mention of the fact that Rasier-PA's liability insurance policies provide primary coverage from the time the operator's App is on until the completion of transportation services; (b) fails to acknowledge the measures Rasier-PA already takes to inform operators of the status of their personal automobile insurance policies; (c) does not address the unduly burdensome nature of collecting written notifications from operators; and (d) ignores the examples presented by Rasier-PA of other uses of personal automobiles in the course of business, where no such notification to the insurers is required.

21. All of these factors need to be fully considered by the Commission and support reconsideration of the Petition for Modification to delete the directives from the *ETA Order* relating to insurer notifications by operators.

IV. Argument: Rasier-PA's Petition for Modification Should Be Granted

22. While Rasier-PA is committed to, and in fact is, complying with the Commission's requirements related to the safety and protection of the public, the arguments in its Petition for Modification which were not addressed by or were overlooked by the Commission in the *October 17 Order*, provide compelling reasons why the directives in the *ETA Order* concerning insurer notifications should be deleted. Additionally, the Commission lacks statutory authority to require Rasier-PA to interject itself into the private contractual relationship

of operators and their personal automobile insurance carriers, particularly since the insurer notification requirements are not necessary for the protection of Rasier-PA's patrons or the public.

23. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Col. Of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

24. Nothing in the Code authorizes the Commission to interject itself into the private contractual relationship between operators and their personal insurance carriers. Code Section 512 empowers the Commission, as to motor carriers, to prescribe such insurance requirements as it may deem necessary for the "protection of persons or property of their patrons and the public." 66 Pa. C.S. § 512. The insurer notification requirements imposed by the *ETA Order* do nothing to advance the protection of Rasier-PA's patrons or the public.

25. In the *ETA Order*, the Commission described the rationale for this requirement as being necessary "to avoid any confusion regarding the status of a driver's personal insurance coverage." *ETA Order* at 18. In the *October 17 Order*, the Commission opined that "this notice requirement provides a public safety and driver protection benefit," but it offered no explanation of any link between the insurer notification directive and public safety. In fact, the Commission

went on to explain that it is necessary for “transparency” and “to ensure that the driver has an understanding of any limitations regarding insurance coverage for an accident that occurs when a driver is not working for Rasier because the driver is using his own vehicle.” *October 17 Order* at 4. Therefore, while the *October 17 Order* made a passing reference to “public safety,” the actual rationale offered for this requirement has nothing to do with public safety.

26. Further, this discussion ignored the various notifications Rasier-PA already provides to operators during the onboarding process regarding insurance-related items, which are designed to ensure that the driver understands any limitations regarding insurance coverage. 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. Rasier-PA also requires the operators to acknowledge this notification that their personal automobile policy may not provide coverage. In addition, Rasier-PA recommends that if operators have any questions about coverage, they should pursue those with their personal insurance carriers. These notifications, particularly given Rasier-PA’s primary insurance coverage, are more than sufficient to alert operators of the need to review their personal insurance policies.¹

27. As to the insurers themselves, they are certainly capable of gathering the necessary information from their insureds so that they can properly price their policies. The Commission has no statutory authority or obligation to ensure that personal automobile insurance companies are aware of all of the activities of their insureds.

28. In addition, the notifications are unnecessary because Rasier-PA maintains liability insurance in amounts that exceed the requirements of the Commission’s regulations at

¹ Please see Petition for Modification at ¶ 11 for references to the record in Rasier-PA’s experimental application proceeding at Docket No. A-2014-2416127.

52 Pa. Code § 32.11, provide primary coverage from the time the operator's App is on until the completion of transportation services, and instructs operators to furnish certificates of Rasier-PA's insurance in the event of an accident. Since Rasier-PA is not relying on the operators' personal insurance policies to provide coverage for any activity in connection with operating on the platform, it is unnecessary to require operators to provide written notification to their personal insurance companies that they are providing ridesharing services.

29. Moreover, such a requirement is not customary in other uses of personal automobiles in the course of business. A broad class of insurance known as "hired-and-non-owned auto coverage" is sold to businesses covering vehicles used in the course of that business but not owned by that business. While ridesharing is one component of that class, several other such industries 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. No requirement for notification to personal insurers is imposed on those other industries even when the personal insurance policy is considered primary.²

30. Additionally, the requirement for operators to provide written notifications to their personal insurers and for Rasier-PA to collect those notifications from operators and maintain these documents for several years is unduly burdensome. Verifying and updating personal insurance coverage of operators on an ongoing basis is a substantial burden that is already assumed by Rasier-PA. Layering extra steps on top of that to collect copies of written notifications from operators and maintain those documents for several years is unduly burdensome - far more than an inconvenience as characterized by the *October 17 Order*.

² Please see Petition for Modification at ¶¶ 13-14 for additional discussion and references to the record in Rasier-PA's experimental application proceeding at Docket No. A-2014-2416127.

31. Especially since the notification directive is unduly burdensome, and because it is not related to any interest in preventing deception of consumers, imposing this requirement on Rasier-PA would violate its rights under the First Amendment of the United States Constitution. The First Amendment prohibits the government from abridging the freedom of speech, and it is well-settled that commercial speech is entitled to this protection. *See Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 105 S.Ct. 2265 (1985). When this protection is applied to what the government may require an entity to disclose, the two-part test is whether the notification (1) is reasonably related to the State's interest in preventing the deception of consumers and (2) is not unduly burdensome. *Dwyer v. Cappell*, 762 F.3d 275, 279 (3d. Cir. 2014). Both prongs of the tests are met here. Rasier-PA has adequately demonstrated the unduly burdensome nature of the requirement, and the Commission has not suggested nor could it reasonably conclude that the insurer notification requirement is at all related to any interest in preventing the deception of consumers, since the public is fully protected by Rasier-PA's liability insurance.

32. Rasier-PA is also unaware of any other jurisdiction authorizing ridesharing services which have imposed a requirement on a transportation network company to direct operators to provide written notifications to their personal automobile insurance requirements. Even in situations where the transportation network company is relying on the operator's personal insurance policy as primary, this requirement has not been imposed.³

³ Additionally, Rasier-PA notes that the current published versions of most bills pending in the General Assembly to authorize transportation network company services would not impose this requirement. *See, e.g.*, Senate Bill 1457 (Fontana); House Bill 2445 (Killion) and House Bill 2453 (Mustio).

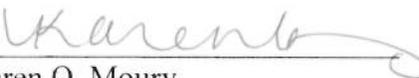
33. It is noteworthy that this is the only requirement of the *ETA Order* with which Raiser-PA has taken issue.⁴ Rasier-PA has complied with all other conditions of the *ETA Order*, while offering compelling justification for seeking a modification of these directives relating to unnecessary and unduly burdensome insurer notifications.

V. Conclusion

WHEREFORE, on the basis of the foregoing, Rasier-PA LLC requests that the Commission grant this Petition for Reconsideration and grant the Petition for Modification filed on October 3, 2014 and modify the Order dated July 24, 2014 to delete the requirements relating to operator notifications to their personal insurance companies.

Respectfully submitted,

Dated November 3, 2014


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Attorneys for Rasier-PA LLC

⁴ Staff has requested the opportunity to review the driver and vehicle lists that are maintained by Rasier-PA in compliance with the *ETA Order*. However, staff has expressed an unwillingness to execute a confidentiality agreement in connection with that request.