**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 13, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman, Dissenting Statement

James H. Cawley

Pamela A. Witmer

Gladys M. Brown, Statement

Application of Rasier-PA LLC,

a limited liability company of the State of

Delaware, for the right to begin to transport,

by motor vehicle, persons in the experimental Docket No. A-2014-2424608

service of shared-ride network for passenger

trips between points in Pennsylvania, excluding

those which originate or terminate in the Counties

of Beaver, Clinton, Columbia, Crawford, Lawrence,

Lycoming, Mercer, Northumberland and Union

**OPINION AND ORDER**

Contents

[I. Procedural History 3](#_Toc404246523)

[II. Related Application Proceedings 7](#_Toc404246524)

[III. Discussion 10](#_Toc404246525)

[A. Legal Standard 12](#_Toc404246526)

[B. Experimental Service 15](#_Toc404246527)

[C. Evidentiary Criteria for Motor Carrier Applications 22](#_Toc404246533)

[1. Public Demand or Need 22](#_Toc404246534)

[2. Evidence of Fitness – Driver Integrity 27](#_Toc404246535)

[3. Evidence of Fitness – Vehicle Safety 33](#_Toc404246536)

[4. Evidence of Fitness – Employees 38](#_Toc404246537)

[5. Insurance 41](#_Toc404246538)

[6. Propensity to Operate Safely and Legally 59](#_Toc404246539)

[7. Financial Fitness 65](#_Toc404246540)

[8. Rates 68](#_Toc404246541)

[9. Record Keeping 71](#_Toc404246542)

[10. Waiver of Regulations 72](#_Toc404246543)

[11. Compliance Plan and Periodic Audits 72](#_Toc404246544)

[IV. Conclusion 73](#_Toc404246545)

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the application of Rasier-PA LLC (Rasier-PA or Applicant) for authority to operate as a motor common carrier of persons in experimental service between points in Pennsylvania (Application) filed on June 2, 2014; (2) the Exceptions of Rasier-PA filed on October 14, 2014, to the Recommended Decision of Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson, issued on September 25, 2014, denying the Application; and (3) the Exceptions of various Protestants filed on October 14, 2014, to Conclusion of Law No. 7 in the Recommended Decision.

The following Protestants filed the above referenced joint Exceptions to Conclusion of Law No. 7: (1) Executive Transportation Company, Inc. (Executive);   
(2) Aceone Trans Co.; AF Taxi, Inc.; AG Taxi, Inc.; AGB Trans, Inc.; Almar Taxi, Inc.; ATS Cab, Inc.; BAG Trans, Inc.; BNG Cab Co.; BNA Cab Co.; BNJ Cab, Inc.; Bond Taxi, Inc.; BSP Trans, Inc.; Double A Cab Co.; FAD Trans, Inc.; GA Cab, Inc.; GD Cab, Inc.; GN Trans, Inc.; God Bless America Trans, Inc.; Grace Trans, Inc.; IA Trans, Inc.; Jarnail Taxi, Inc.; Jaydan, Inc.; LAN Trans, Inc.; LMB Taxi, Inc.; MAF Trans, Inc.; MDS Cab, Inc.; MG Trans Co.; Noble Cab, Inc.; Odessa Taxi, Inc.; RAV Trans, Inc.; Rosemont Taxicab Co., Inc.; S&S Taxi Cab, Inc.; SAJ Trans, Inc.; Saba Trans, Inc.; SF Taxi, Inc.; Society Taxi, Inc.; Steele Taxi, Inc.; TGIF Trans, Inc.; V&S Taxi, Inc.; VAL Trans, Inc.; VB Trans, Inc.; and VSM Trans, Inc. (Medallion Carriers); and (3) BM Enterprises, Inc., t/a A.G. Taxi; Bucks County Services, Inc.; Dee Dee Cab Company; Germantown Cab Company; Ronald Cab, Inc., t/a Community Cab; Shawn Cab, Inc., t/a Delaware County Cab; and Sawink, Inc., t/a County Cab (Non-Medallion Carriers) (collectively Joint Protestants).[[1]](#footnote-1)

Rasier-PA and JB Taxi LLC t/a County Taxi Cab (JB Taxi) filed Replies to Exceptions on October 20, 2014. On October 20, 2014, the Insurance Federation of Pennsylvania (Insurance Federation) filed consolidated Replies to Exceptions related to Rasier-PA’s Allegheny County application at Docket No. A-2014-2416127 (Allegheny Application) and to this Application, which it erroneously listed as A-2014-2416128.[[2]](#footnote-2) Keystone Cab Service, Inc. (Keystone Cab); EZ Taxi, LLC (EZ Taxi); Good Cab, LLC (Good Cab); and United Cab, LLC (United Cab) (collectively Harrisburg Carriers) filed Replies to Exceptions on October 24, 2014.[[3]](#footnote-3) For the reasons set forth below, we shall grant Rasier-PA’s Exceptions, in part, and deny them, in part; deny the Protestants’ Exceptions; reverse the Recommended Decision and grant the Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted, consistent with this Opinion and Order.

# Procedural History

On June 2, 2014, Rasier-PA, a wholly owned subsidiary of Uber Technologies, Inc. (Uber), filed its Application for experimental service for passenger trips between points in Pennsylvania.[[4]](#footnote-4) In its Application, Rasier-PA indicated the following:

Applicant proposes to use a digital platform to connect passengers to independent ride-sharing operators (“Operators”) with whom Applicant intends to contract. Operators will use their personal, noncommercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the Uber technology to generate leads from riders who need transportation services. Applicant does not own vehicles, employ drivers or transport passengers.

Application at 3.

Notice of the Application was published in the Pennsylvania Bulletin on June 14, 2014, at 44 *Pa. B*. 3662. The notice provided that the deadline for filing protests to the Application was June 30, 2014.

On June 20, 2014, MTR Transportation, Inc., t/d/b/a K-Cab Co. (MTR), filed a protest to the Application. On July 17, 2014, Rasier-PA and MTR filed a restrictive amendment and stipulation. The Applicant agreed to restrictively amend its Application so that the operating authority sought would be:

To transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Pennsylvania, excluding trips which originate or terminate at points in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Montour, Northumberland and Union and in that portion of the County of Luzerne which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County.

Restrictive Amendment and Stipulation at 1.

In response, MTR agreed to withdraw its protest, conditioned upon the acceptance by the Commission of the restrictive amendment and stipulation.

On June 30, 2014, the following entities filed protests to the Application: the Medallion Carriers; the Non-Medallion Carriers; the Harrisburg Carriers; Executive; Capital City Cab Service, Inc. (Capital City Cab); and JB Taxi. Each of these protests was the subject of Preliminary Objections filed by Rasier-PA, which sought the dismissal of the protests. By Interim Orders dated August 11, 2014, the ALJs denied the Applicant’s Preliminary Objections.

Combined evidentiary hearings for this proceeding and the Allegheny Application, were held on August 18-19, 2014, and September 9, 2014. Rasier-PA was represented by counsel and presented six witnesses and seven exhibits, which were admitted into the record. The Insurance Federation was represented by counsel and presented one witness. Counsel representing the Medallion Carriers, the Non-Medallion Carriers, and Executive presented the testimony of three witnesses. Counsel appeared on behalf of the Harrisburg Carriers and presented the testimony of one witness. JB Taxi was represented by counsel; its counsel did not present witness testimony, but offered one exhibit, which was admitted into the record. Capital City Cab was also represented by counsel but did not present witness testimony.

The hearing resulted in a transcript of seven hundred and thirty-five pages. Each Party filed a brief and the record was closed by Interim Order issued September 18, 2014.

The Recommended Decision, issued on September 25, 2014, determined that the Commission has jurisdiction over this matter because the Applicant seeks to provide “experimental service,” which is a class of motor carrier service. Thus, the ALJs concluded that Rasier-PA must obtain a Certificate of Public Convenience in order to facilitate transportation service within the Commonwealth under 66 Pa. C.S. § 1101. However, the ALJs found that Rasier-PA failed to meet its burden of proof pursuant to 52 Pa. Code § 41.14, which is the Commission’s statement of policy pertaining to the evidentiary criteria used to decide motor carrier applications. As a result, the ALJs denied the Application. R.D. at 43-44.

As previously discussed, the Applicant and various Protestants filed Exceptions on October 14, 2014, and Replies to Exceptions were filed on October 20 and 24, 2014.

# Related Application Proceedings

On April 14, 2014, Rasier-PA filed its Allegheny Application requesting authority to operate experimental service between points within Allegheny County. On July 31, 2014, ALJs Long and Watson issued an Interim Order in the Allegheny Application proceeding directing the Applicant to provide certain trip data for the record in that proceeding. The ALJs based this directive on the Commission’s July 24, 2014, Order for Interim Emergency Relief in connection with enforcement proceedings initiated against the Applicant’s parent company, Uber.[[5]](#footnote-5)

The *Uber Order* directed Uber to immediately cease and desist from utilizing its digital platform (App) to facilitate the transportation of passengers until it secured the proper authority from the Commission. Concurrent with the *Uber Order* Commissioner James H. Cawley issued a Statement requesting the issuance of a Secretarial Letter seeking additional information to aid in the formulation of the final Order in the enforcement proceedings against Uber at *Pa. PUC, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (*Uber Complaint Proceeding*). Following the issuance of the Secretarial Letter on July 28, 2014, the ALJs determined that the information requested in the Secretarial Letter was also important to the development of the record in the Allegheny Application. Accordingly, by Interim Order dated July 31, 2014 (*Interim Order*), the ALJs directed the Applicant to present evidence related to the following information at the hearing:

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:
2. From the initiation of Uber’s service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
3. 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;
4. From June 5, 2014, to July 1, 2014 (the date the [*Uber*] *Order* became effective); and
5. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
6. 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.
7. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates 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.

During the combined evidentiary hearings, the Applicant objected to the provision of the information required in the *Interim Order* arguing that the trip data was highly confidential and proprietary, was not relevant to the proceeding and invoked a Fifth Amendment right against self-incrimination. Counsel for the Applicant instructed her witness to not answer each question posed from the *Interim Order*. Subsequently, counsel for the Harrisburg Carriers in this Application made an oral Motion to Dismiss the Application for failure to comply with the ALJs’ Order. The ALJs held the ruling on the Motion in abeyance and provided the Parties an opportunity to brief their positions.

By Recommended Decision issued on September 25, 2014, ALJs Long and Watson dismissed the Allegheny Application due to the Applicant’s willful failure to comply with an order of the presiding officers. Allegheny Application R.D. at 9-10. By Opinion and Order issued commensurate with this Opinion and Order, the Commission, among other things, reversed the ALJs and acted to grant the Allegheny Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted.

On July 2, 2014, Rasier-PA filed an application for Emergency Temporary Authority (ETA) to operate experimental transportation network service between points in Allegheny County. On July 24, 2014, the Commission approved the application contingent upon the Applicant meeting specific insurance and tariff requirements. *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, PA*, Docket No. A-2014-2429993 (Order entered July 24, 2014) (*July 2014 ETA Order*). Pursuant to 52 Pa. Code § 3.383(b)(4)(i), an ETA is valid only for an initial period not to exceed sixty days.

On September 23, 2014, Rasier-PA filed a Petition for Extension of the ETA and, on October 3, 2014, filed a Petition for Modification of the *July 2014 ETA Order*. As to the modification request, Rasier-PA sought to eliminate the provision in the *July 2014 ETA Order* requiring all of its operators/drivers to notify their insurers, in writing, of their intent to operate in Rasier-PA’s service. According to the Applicant, the notice requirement is unduly burdensome and unnecessary. On October 17, 2014, we granted the Applicant’s request to extend its ETA until the Commission issues a final determination on its experimental authority application.[[6]](#footnote-6) However, we denied the Petition for Modification finding that Rasier-PA did not provide any colorable justification to eliminate the notice requirement which we determined to be a reasonable public safety and driver protection benefit. *October 2014 ETA Order* at 4-5.

# Discussion

The pervasive use of smart phones and the Internet in our society has revolutionized various sectors of our economy.  One such example is the creation of Transportation Network Companies (TNCs).  TNCs are altering the space traditionally occupied by taxicabs and the difference is much more than reinventing dispatch methods.  The most fundamental change between TNCs and traditional taxicab service is the contractual use of private, personal vehicles and drivers to carry passengers, rather than ownership of vehicle fleets by the certificate holder.  This innovative use of the public space should be encouraged in a way that is consistent with the Commission’s mission to both protect the public interest and foster new technologies.

The Application before us is a request for this new type of motor carrier service under our experimental service Regulation. 52 Pa. Code § 29.352. This Regulation permits the Commission to approve a type of motor carrier service not currently contemplated by our Regulations on a short-term basis. During the certificate term, we have the discretion to grant the certificate holder time to concretely demonstrate that the service is beneficial to the public and can be operated safely. Further, the Regulation affords the certificate holder the opportunity to demonstrate that it will comply with the regulatory authority of the Commission. In light of the evidence of need established by Rasier-PA, we will exercise our discretion to approve the Application subject to the conditions and requirements set forth in Appendix A and discussed in this Opinion and Order. As our guiding principle, we want to ensure that the provision of service is done in a safe manner with appropriate insurance coverage. We believe that this goal can be achieved under this proposal with the conditions and provisions required in this Opinion and Order. Additionally, we believe that this proposal will also serve our goal of ensuring availability of service. If Rasier-PA fails to comply with any of the terms of this Opinion and Order, including the conditions and requirements set forth in Appendix A, the Commission will not hesitate to take appropriate enforcement action.

Subject to the terms and conditions discussed below, we believe that this innovative type of transportation service can be of great benefit to the traveling public and should be certificated by the Commission. Given the myriad of differences between TNCs and the traditional taxicab industry, we do so on the basis of experimental authority, which grants operating rights for two years. This two-year time frame is appropriate given the dynamic and evolving nature of the TNC business model.

Most of the conditions we adopt largely mirror our Regulations and Rasier-PA’s existing operating practices, such as vehicle inspection, driver background checks, zero tolerance for drug and alcohol use while operating a vehicle, and insurance, as well as other aspects of Rasier-PA’s proposed business model. Consistent with our ability to set appropriate parameters for experimental service, we also waive certain Regulations that are not applicable to the TNC business model.

The ALJs made one hundred and fifty-two Findings of Fact and reached ten Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## Legal Standard

Pursuant to Section 1103(a) of the Public Utility Code (Code), 66 Pa. C.S. § 1103(a), this Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” In order to make these determinations on traditional common carrier applications, the Commission, in a policy statement promulgated at Section 41.14 of the Pa. Code, set forth the criteria to be taken into consideration.[[7]](#footnote-7) In an application for experimental service however, there is no requirement that all of these factors need to be strictly met in order to obtain a Certificate of Public Convenience since Section 29.352 of our Regulations allows the Commission to both require additional regulations or requirements and waive regulations that do not apply to the Experimental Service described in an application. Nevertheless, we believe it prudent to at least consider these standards as part of our evaluation here.

These factors, found at 52 Pa. Code § 41.14, are:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications--statement of policy.

(a)An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established 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.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331--29.335 (relating to limousine service.)

The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.,* 72 Pa. P.U.C. 262, 274 (1990) (*Blue Bird*).

Thus, in order to approve an application for a Certificate, the Commission must find that an applicant has sustained its burden of proving, by substantial evidence, a public demand or need for the service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally. The Protestants also bear a burden of proof. To defeat an application, a protestant must show that the entry of the applicant into the transportation market would endanger or impair the operations of existing common carriers to the extent that it would be contrary to the public interest. 52 Pa. Code

§ 41.14(c). As we discussed in *Blue Bird*, “[o]nly the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c).” 72 Pa. P.U.C. at 286.

In *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## Experimental Service

### Application

Rasier-PA plans to use a digital platform to connect passengers to independent drivers or operators (Operators) with whom it will contract. Operators will use their personal, non-commercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the technology from its parent corporation, Uber, to generate leads from riders who need transportation services. Rasier-PA will not own vehicles, employ drivers or transport passengers. Application at 3.

Under this business model, riders will request transportation via Uber technology through the Internet or a mobile application (App) on their smartphones. When an Operator responds to the request, the rider will receive the vehicle type and a photo of the Operator, along with an indication of the Operator’s current location and estimated time of arrival. Operators will not be permitted to solicit or accept street-hails. *Id.*

The Applicant proposes to operate this service for passenger trips between points in the Commonwealth, excluding points originating or terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union. *Id.*  As noted previously, the Applicant filed a Restrictive Amendment so that the proposed operating authority also excludes a portion of Luzerne County which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County. Restrictive Amendment and Stipulation at 1. The Application does not specifically exclude service for points originating or terminating in Allegheny County. However, in light of Rasier-PA’s prior filing of its pending Allegheny Application – which involved a proposal for identical experimental service within Allegheny County – the present Application will be read to also exclude points originating or terminating in Allegheny County.

Rasier-PA states that it will maintain a website that provides a customer service telephone number or email address. It will also maintain records to demonstrate compliance with all of the requirements, standards and obligations described in the Application. Additionally, the Applicant acknowledges that it is subject to an annual assessment based upon reported gross Pennsylvania intrastate revenues, which it contends will be delegated to a third party to interface with the Commission. Rasier-PA further understands that it has sole responsibility to address Commission-related passenger complaints and that a failure to adhere to the commitments made in the Application may result in the Commission imposing sanctions, including civil penalties, suspension and revocation of the certificate of public convenience. Finally, Rasier-PA alleges that it is not currently engaged in unauthorized intrastate transportation for compensation between points in Pennsylvania and willnot engage in such transportation unless and until such authorization is received from the Commission. Application at 8-9.

### Positions of the Parties

The various Protestants[[8]](#footnote-8) argued that the Applicant is seeking authorization to operate a TNC, a term that is undefined under the Code. *See e.g.,* Joint Protestants Brief at 2. According to the Protestants, the General Assembly has not empowered the Commission to grant certificates of public convenience to transportation network companies. Although the Commission may grant certificates to certain classes of transportation, the Protestants contend that the Application must be denied because Rasier-PA is not a “motor carrier” – as defined in Section 102 of the Code, 66 Pa. C.S. § 102. The Protestants submit that the term “motor carrier” requires the Applicant to own or operate the motor vehicles involved in the proposed service. Here, the proposed service involves independent drivers owning and operating their own vehicles. Additionally, they argue that the “experimental service” regulation under 52 Pa. Code § 29.13 only applies to “motor carriers” as defined in the Code. *See e.g.,* Joint Protestants Brief at 7-11.

The Protestants also contend that the Applicant is attempting to act as a broker and not as a motor carrier. *Id.* at 12-14. Pursuant to 66 Pa. C.S. § 2505(a), brokers of transportation in the Commonwealth must obtain a brokerage license issued by the Commission and the broker must utilize certificated motor carriers to provide transportation. However, the Applicant does not hold a broker license nor does it intend to use certificated drivers to provide the transportation service. According to the Protestants, the Commission is prohibited from allowing the Applicant to provide such broker services. *See e.g.,* Joint Protestants Brief at 12-14.

The Applicant argues that because its new and innovative service does not fit squarely within the types of transportation services delineated in the Code and the Commission’s Regulations, it should qualify as an “experimental service.” Rasier-PA Brief at 46. According to the Applicant, until the Code and the Regulations catch up with technology, the Commission has appropriately acted to ensure that the existing regulatory framework does not prevent the delivery of innovative transportation options and has properly classified the proposed transportation network service as “experimental service.” *Id.*

### Recommended Decision

The ALJs disagreed with the Protestants’ contentions that the Applicant as a TNC cannot be considered a motor carrier and that Rasier-PA is ineligible for a certificate of public convenience. First, the ALJs explained that the Code does not require the Applicant to own vehicles in order to be a motor carrier. In support, the ALJs referenced the following definitions under Section 102 of the Code, 66 Pa. C.S. § 102: (1) a transportation public utility is: “Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . . transporting passengers or property as a common carrier;” (2) a “common carrier” is a person or corporation “holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers . . . .;” and (3) a “common carrier by motor vehicle” is a common carrier which undertakes the transportation of passengers within the Commonwealth “by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes the motor vehicle, with or without driver, for transportation for use in the transportation of persons . . . .” R.D. at 27-28.

Further, the ALJs did not consider the Applicant’s own statements that it is not providing transportation service to be persuasive. Rather, viewing the proposed service as a whole, the ALJs deemed the Applicant as seeking to offer transportation to passengers for compensation and determined that the Commission has the jurisdiction to grant a certificate of public convenience to a TNC. *Id.*

Next, the ALJs recognized that the Commission regulates various types of motor carrier service and that not all forms of common carrier transportation fit squarely within these categories. As such, the Commission promulgated a regulation for “experimental service” to accommodate a proposed transportation service not encompassed in the regulatory categories. The ALJs concluded that it is appropriate to consider the Applicant’s transportation service under the experimental service regulation as a motor carrier because it does not fit within any of the other regulatory categories including as a broker of transportation service. *Id.* at 30.

The ALJs explained the following in support of their finding:

[Section 29.352] of the regulations permits the Commission to approve a type of motor carrier service not currently contemplated by the regulations on a short-term basis, which permits the Commission (or the General Assembly) the time to promulgate additional regulations [or laws] to accommodate the proposed service if it is appropriate to do so. It also provides the certificate holder with the time to concretely demonstrate that the service proposed is indeed a public benefit, that the service can be operated safely and that the certificate holder will maintain an appropriate relationship with the Commission as the regulatory body. Section 29.352 further provides the Commission with the flexibility to waive the application of certain regulations that are not appropriate to impose and to also impose additional requirements which are not explicitly provided for in the Code, particularly informational and reporting requirements.

R.D. at 31 (citing *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*, Docket No. A-2014-2410269 (Order entered May 22, 2014) (*Yellow X*)).

### Exceptions

The Joint Protestants filed Exceptions to Conclusion of Law No. 7 which stated that: “[i]t is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.” In support, the Joint Protestants essentially reiterated the arguments summarized above. Joint Protestants’ Exc. at 2-12.

In its Replies, the Applicant repeated its prior arguments and added that the Commission is granted great deference in interpreting and applying the statutory provisions it is charged to administer. Rasier-PA R. Exc. at 3.

### Disposition

Upon review, we agree with the ALJs that the Commission has jurisdiction to grant a Certificate of Public Convenience to a TNC offering transportation services to passengers for compensation. In contrast to the interpretations offered by the Joint Protestants, the Code clearly does not require the Applicant to own vehicles in order to be a motor carrier. Rather, the definitions of transportation “public utility,” “common carrier,” and “common carrier by motor vehicle” convey the opposite position that the provision of transportation service can be offered indirectly and independent of the actual ownership of a vehicle. 66 Pa. C.S. § 102. There is no legitimate question that Rasier-PA, utilizing the Uber software and back office functions, is offering and operating “on demand” motor carrier passenger service to the public.

As we discussed in the *July 2014 ETA Order*, ourregulations delineate various types of motor common carrier passenger service, which include 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. Each of these types of passenger service has unique characteristics that define the particular transportation mode. However, not all types of common carrier transportation fit squarely within these specified categories, as we recognized when we promulgated these regulations. Therefore, in order to accommodate a proposed transportation methodology not encompassed within the stated categories, our regulations also provide for “experimental service” under 52 Pa. Code § 29.352.

Here, the ALJs correctly concluded that it is appropriate to consider the proposed transportation under the experimental service regulation rather than as a broker of transportation under 66 Pa. C.S. § 2505(a), which precludes a broker from using uncertificated motor carriers.[[9]](#footnote-9) Clearly, the Applicant is proposing to use private individuals in their personal vehicles rather than certificated motor carriers. We agree with the ALJs that the innovative nature of this proposed service – the use of so-called non-professional drivers in their private vehicles – requires an evaluation under Section 29.352 of our Regulations and a determination of whether this service can be provided in a safe manner. As the ALJs aptly explained, this regulation gives the Commission the flexibility to consider a new type of motor carrier service on a trial basis to determine if the proposed service is beneficial to the public.

We find no error in the ALJs’ disposition of this issue and shall deny the Joint Protestants’ Exceptions.

## Evidentiary Criteria for Motor Carrier Applications

**Statement of Policy - 52 Pa. Code § 41.14**

### Public Demand or Need (52 Pa. Code § 41.14(a))

#### Application

The Applicant contends that its experimental service will fill significant gaps in the existing transportation infrastructure. According to Rasier-PA, its proposed service will provide reliable, affordable and safe alternatives to existing modes of transportation throughout the Commonwealth and needed transportation options in traditionally underserved neighborhoods. Rasier-PA Brief at 17.

In support of its Application, Rasier-PA presented the testimony of the following witnesses:

* Rebecca Gonzalez-Bartoli, a Luzerne County resident[[10]](#footnote-10) on disability who used Uber’s services in another part of the country earlier this year. Ms. Gonzalez-Bartoli testified that, if she uses buses and shared ride programs available in her area, it normally takes two hours for her to get to a doctor’s appointment that is twenty minutes away. If Uber were available it would reduce her stress and anxiety of getting to weekly or more frequent doctor’s appointments. Tr. at 42-43.
* Lori Sergent, a Lehigh County resident who has never used the Uber App but would do so if it were available. Ms. Sergent testified that she does not use taxi services because she believes they have a reputation of being untrustworthy. She stated that she and her family, including her handicapped husband, rely on one van for transportation. The availability of the Uber App would provide additional transportation options for them. Tr. at 179-180.

As to evidence of compelling societal benefits responsive to public demand, the Applicant presented the testimony of Brian Bashin, Chief Executive Officer for Lighthouse for the Blind. Mr. Bashin testified about the impact of the proposed service for blind and visually impaired individuals as follows:

This is not a discretionary item or just might be [a] nice item. This is something that some 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.

Tr. at 165.

The Applicant also presented the testimony of Matthew Gore, an Uber employee and former Associate General Manager-Uber Pittsburgh. Mr. Gore testified about research and demand for App services before launching the service in a new market and when a new service has been launched it has “consistently been one of overwhelming and instant demand and use.” Tr. at 66.

The Applicant submits, through Mr. Gore’s testimony, that the entry of its experimental service into a new market reduces wait times for a ride especially in underserved neighborhoods, referencing a study conducted in Boston and Mr. Gore’s own experience in Washington D.C. Tr. at 70. Mr. Gore also testified that the rates of driving under the influence decline in markets where the service becomes available. Tr. at 75.

#### Recommended Decision

The ALJs stated that “[a]lthough transportation network company service generally is of great potential use to the public, this Applicant did not sustain its burden of demonstrating that it is also committed to protecting the public – both drivers and passengers.” Thus, the ALJs found that it is not in the public interest to grant the Applicant a certificate of public convenience. R.D. at 1.

#### Exceptions

In its Exceptions, Rasier-PA argues that the ALJs ignored evidence that its proposed service would fulfill some useful public purpose and be responsive to a public need and demand. According to the Applicant, its proposed experimental service fills significant gaps in transportation infrastructure, provides consumers a competitive alternative to traditional call and demand service, and allows for wider-ranging, faster and more user-friendly service. The Applicant contends that the proposed service meets the requirements of Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a). Rasier Exc. at 11.

Rasier-PA argues that under the Commonwealth Court’s interpretation of Section 1103 of the Code, an applicant is required to demonstrate that its proposed service will fulfill some useful public purpose and be responsive to a public need or demand, and that it is fit to provide the proposed service. *Id.* (citing *Purolator Courier Corp. v. Pa. PUC*, 414 A.2d 450 (Pa. Cmwlth. 1980)). The Applicant submits that its evidence overwhelmingly shows that its proposed service would fulfill some useful public purpose and be responsive to a public need or demand and references the testimony of its witnesses. Rasier Exc. at 11-15.

The Applicant also argues that the Commission has already recognized the benefits of this type of service in *Yellow X* and the *July 2014 ETA Order*. *Id.* at 10-11.

In its Replies to Exceptions, JB Taxi argues that the requirements for authorizing public utility service are more complex than a showing related to one particular aspect and that the Applicant is required to show both technical and financial fitness. JB Taxi R. Exc. at 3-4.

The Harrisburg Carriers filed joint Replies to Exceptions contending that the ALJs did not ignore compelling evidence. Rather, the Applicant is required to show that it meets all of the criteria under 52 Pa. Code § 41.14. They further argue that Rasier-PA failed to demonstrate need in Dauphin, Lebanon, Adams, York, Lancaster, Cumberland, Berks or Bucks Counties. Harrisburg Carrier R. Exc. at 2-3.

#### Disposition

Upon review of the record, we conclude that the Applicant has met its burden of showing that the proposed service would fulfill some useful public purpose and be responsive to public need and demand.

In *Blue Bird*, *supra*,the Commission clarified the type of evidence an applicant may present to satisfy its burden of proof under Section 41.14(a), stating, in pertinent part, that:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant’s proposed service will satisfy the supporting witnesses’ asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that “approval of the application will serve a useful public purpose, responsive to a public demand or need.”

*Id.* at 272.

An applicant is not required to establish a public demand or need for the proposed transportation in each and every point within the proposed service territory. Rather, it is sufficient if an Applicant establishes a cross section of public demand or need for the proposed service in the proposed service territory. *Morgan Drive Away. Inc. v. Pa. PUC*, 512 A.2d 1359 (Pa. Cmwlth. 1986); and *Purolator Courier Corp. v. Pa. PUC*, 414 A.2d 450 (Pa. Cmwlth. Ct. 1980).

The number of witnesses which comprise a cross section of the public on the issue of public demand or need for an Applicant’s proposed service will necessarily vary with the circumstances of the case such as the scope of the requested operating authority and the population density in the intended operating territory. *Blue Bird* at 274. Where the applicant seeks a narrow grant of operating authority, fewer witnesses are required to show a cross section of the public needing the applicant’s proposed transportation in the intended operating territory. *Id*. at 275.[[11]](#footnote-11) Moreover, in the context of an application for experimental service, the Commission may exercise additional discretion in regard to market entry for a proposed service that is new and innovative.

Although there was not witness support for each of the proposed counties of service, the Applicant has provided a sufficient cross section of witness testimony relevant to public need and demand throughout the requested service areas. The Applicant’s evidence supports its contention that a substantial benefit will be derived from the initiation of its competitive service. We agree that the introduction of the proposed transportation service will provide consumers with another competitive alternative to traditional call and demand service by providing faster and user-friendly scheduling of transportation service. The availability of this new and innovative service, together with appropriate consumer protections, will provide a benefit to the public in the proposed service territory. Because of the unique nature of the proposed experimental service, we do not believe that the Applicant is required to present a large evidentiary showing of need in this case. The fact that the experimental certificate is valid for only two years will give the Applicant an opportunity to establish market demand for the new service. In addition, we agree that the Applicant has set forth sufficient evidence to establish that its proposed service will provide a compelling societal benefit to consumers throughout the proposed service territory who are blind or visually impaired. Accordingly, we shall grant Rasier-PA’s Exception as to this issue.

### Evidence of Fitness – Driver Integrity (52 Pa. Code § 41.14(b)(4) & (b)(6))

#### Application

Rasier-PA states that it will require Operators to meet standards that are consistent with, and more stringent than, the Commission’s requirements set forth in 52 Pa. Code §§ 29.502-29.507, as described more fully below:

*Criminal Background Checks.*  Applicant will conduct 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 the digital 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, shall automatically and permanently disqualify an individual from acting as an Operator.

*Driving History Record.* Applicant will have a driving history record conducted on each Operator before the Operator may offer service. 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 the police, or the use of a motor vehicle to commit a crime, or a conviction that appears on a driving history check in the previous 3 years for driving with a suspended or revoked license, shall automatically disqualify an individual from acting as an Operator.

*Drugs or Alcohol.* Applicant has a zero tolerance policy on the use of drugs or alcohol while an Operator is providing ride-sharing services. Notice of this zero tolerance policy is on the Applicant’s website, along with procedures to report a complaint, including a telephone number for the Commission about an Operator with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Applicant immediately suspends an Operator upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, and such suspension will last the duration of the Applicant’s investigation.

*Other Driver Requirements.* Operators must possess a current, valid driver’s license, proof of registration, proof of motor vehicle insurance and be at least 21 years of age.

Application at 6-7.

#### Recommended Decision

The ALJs found that the Applicant failed to demonstrate that it has a plan or even a commitment to accept responsibility for its role in ensuring driver integrity. The ALJs noted that Rasier-PA has no employees and its parent, Uber, has assigned employees and some independent contractors to launch the service in Pittsburgh. The ALJs explained that the Applicant’s witness Matthew Gore described his role as the associate general manager for “Uber Pittsburgh.” R.D. at 35. The ALJs observed that Mr. Gore was clearly responsible for the business development and launch of the service and he never described his role as including regulatory oversight or governance of the drivers. The ALJs stated that Mr. Gore could not name an individual who would be responsible for regulatory compliance but “imagined” that it would be his replacement. *Id*. The ALJs submitted that, as for governance of the drivers, it was repeatedly emphasized by Mr. Gore that the drivers were independent contractors and that Uber did not intend to exert control over their activities unless a passenger reported inappropriate activity, such as being under the influence of drugs or alcohol. *Id.*

The ALJs also observed that, although Uber performs initial criminal and driving history background checks, Mr. Gore could not articulate any plan for continuing to ensure that the drivers maintained appropriate driving history and insurance other than these initial requests. The ALJ explained that Mr. Gore did not know how often or whether the Applicant would make sure that a driver’s vehicle registration or insurance was renewed on an annual basis. The ALJs concluded that no plan for ongoing oversight of the drivers was articulated. R.D. at 35.

#### Exceptions

In its Exceptions, Rasier-PA avers that the ALJs’ conclusion that Rasier-PA failed to demonstrate that it has a plan or commitment to accept responsibility for its role in ensuring driver integrity wholly disregards record evidence. Rasier-PA states that, although the ALJs addressed the criminal background checks, driver history records and a zero tolerance for the use of alcohol or drugs in their Findings of Fact, they are not even acknowledged in the discussion of driver integrity. Rasier-PA explains that it requires its operators to meet standards more stringent than the standards set forth in 52 Pa. Code   
§§ 29.502-29.507 and its industry-leading driver integrity programs are a linchpin of its proposal and demonstrate its commitment to offering safe transportation network services. Rasier-PA Exc. at 17-20.

Rasier-PA submits that a simple solution to any concerns about the ongoing process of checking criminal backgrounds and driving records is for the Commission to require Rasier-PA to submit a compliance plan as a condition of approving the Application. Rasier-PA suggests that a required element of that compliance plan could be a protocol for the annual review of criminal backgrounds and driving records of operators, along with a description of a driver training program, consistent with the *Yellow X* Order. The Applicant explains that regardless of a compliance plan, the Commission’s Regulations require Rasier-PA to review criminal history records every two years and driver history every twelve months. Rasier-PA Exc. at 20-21.

Rasier-PA avers that the ALJs’ focus on the fact that operators are independent contractors has no bearing on the quality of service being provided. The Applicant states that the Recommended Decision completely ignores the evidence offered by the Applicant regarding the accountability of operators due to the customer feedback and ratings system. Rasier-PA explains that customers can provide feedback on its website and may rate operators and offer feedback on the App. Rasier-PA also submits that when it receives a complaint from a customer it investigates the issue and timely responds to the customer. Rasier-PA notes that, as Mr. Gore testified, the availability of feedback “creates a situation where independent operators seek to provide the best service possible because they know they are accountable.” Rasier-PA Exc. at 21 (citing Tr. at 65). Rasier-PA submits that when operators fail to fulfill the requirements of their agreements with Rasier-PA, they are deactivated from the system. Rasier Exc. at 21.

In its Reply Exceptions, JB Taxi opines that the Commission should support the findings and conclusion in the Recommended Decision that the Applicant does not have a plan or method of compliance, particularly with respect to assigning responsibilities for assuring driver safety. JB Taxi argues that the ill-defined responsibilities to be assigned to third-party contractors or employees of the parent company, as they may be assigned from time to time, should not be accepted by the Commission in these circumstances as demonstrating that the public will be protected. JB Taxi R. Exc. at 4.

#### Disposition

Upon review, we acknowledge that Rasier-PA’s proposed criminal background check requirements appear to exceed the Commission’s regulatory requirements. The Applicant’s seven-year look-back period on the Multi-State/Juris Criminal Records Locator is more stringent than the twelve-month criminal look back period under 52 Pa. Code § 29.505(a). Further, Rasier-PA submits that it will automatically and permanently disqualify an individual if there is a match on the National Sex Offender Registry database or if the criminal background check reveals a crime of violence, sexual abuse, felony, robbery, or felony fraud within the past seven years. In contrast, 52 Pa. Code § 29.505(c) contains no automatic disqualification for violent crimes or sexual offenses. Rather, Section 29.505(c) only prohibits the employment of a driver if the prior conviction adversely affects the individual’s suitability to provide service.

Additionally, the proposed driver history look-back period exceeds the requirements of 52 Pa. Code § 29.504. Rasier-PA plans to automatically disqualify an individual operator whose driving history check reveals, within the past seven years, a conviction of aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade the police, or the use of a motor vehicle to commit a crime. The look-back window under Section 29.504, for a driver history report, is three years and there is no automatic disqualification if the check reveals a poor driving history.

On the face of the proposal, however, there is no requirement that the Applicant conduct follow-up criminal and driver history record checks. During the hearing, Mr. Gore testified that he believes there is a process in place for annual criminal and driver record checks but could not verify such a policy. Tr. at 307. Additionally, although 52 Pa. Code §§ 29.504(b) and 29.505(b) require carriers to conduct annual driver history checks every twelve months and criminal background checks every two years, it is unclear how Rasier-PA intends to comply with the regulatory requirement for follow-up background checks and which employee would be responsible for regulatory compliance.

In order to ensure ongoing compliance with the proposed record checks, we will require Rasier-PA to conduct criminal and driver history record checks both at the time of driver sign-up and annually thereafter. Specifically, we shall require Rasier-PA to undertake driver background checks of the scope and breadth described in its proposal and consistent with 52 Pa. Code §§ 29.503 and 29.505 both at the time of driver sign-up and annually thereafter. Rasier-PA shall maintain verifiable records thereof for two years.

Additionally, Rasier-PA shall undertake drivers’ history checks as outlined in its proposal and consistent with 52 Pa. Code § 29.504 both at the time of driver sign-up and annually thereafter. Rasier-PA shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Rasier-PA shall maintain verifiable records thereof for three years.

Accordingly, given the experimental nature of the service, we shall grant the Applicant’s Exceptions regarding its plan to ensure driver integrity; reverse the ALJs’ findings as to the driver integrity factor; and order the Applicant to ensure annual criminal and driver record checks consistent with this Opinion and Order.

### Evidence of Fitness – Vehicle Safety (52 Pa. Code § 41.14(b)(2))

#### Original and Amended Application

In its original Application, Rasier-PA stated that it will require Operators’ vehicles to meet standards that are consistent with the Commission’s requirements, particularly as to safety, as more fully described below:

*Inspections.*  Applicant will require vehicles operated by Operators to undergo and pass an annual and comprehensive safety inspection before the vehicle provides a ride-sharing service, which is consistent with the [Commission’s] requirements at 52 Pa. Code §§ 29.402 and 29.405. Such inspections 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. Additionally, Applicant acknowledges that vehicles are subject to inspection by Commission enforcement officers through routine inspections to ensure compliance with these requirements.

*Vehicle Age and Type.* Operators contracted by Applicant will be required to use motor vehicles that are not more than 10 years old and are designed to transport no more than 10 persons, including the driver. Eligible vehicles include street-legal coupes, sedans, or light duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles and pickup trucks.

*Other Vehicle Requirements.* Vehicles are required to 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; 4 matching wheel covers; and operative air conditioning.

Application at 7-8.

Rasier-PA subsequently amended its Application to reduce the vehicle age limit to eight years to be consistent with the *July 2014 ETA Order*. Tr. at 63. However, Mr. Gore testified that, although Rasier-PA is currently complying with the 100,000 miles odometer limit set forth in the *July 2014 ETA Order*, he did not believe the mileage limitations would improve the quality of the vehicles. According to Mr. Gore, Rasier-PA’s riders are sensitive to quality and hold the Applicant to a higher standard than the odometer limitation can likely achieve. Tr. at 64. Thus, Rasier-PA proposes eliminating the odometer limitation altogether or selecting a higher odometer reading level in connection with this Application. Rasier-PA Brief at 40.

#### Recommended Decision

The ALJs observed that neither the Applicant nor Uber perform the physical inspections of the vehicles used to provide transportation services. The ALJ noted that instead, Uber relies solely on the annual vehicle inspections performed by the Pennsylvania Department of Transportation (PennDOT) and there is no ongoing plan for any additional physical inspection of the vehicles. The ALJs stated that Uber relies on feedback from passengers regarding comfort issues and the appearance of the vehicle. The ALJs opined that, although Uber clearly maintains records, and indeed touts the annual income that can be derived from drivers using the Uber app, the witness presented by the Applicant did not evidence any acknowledgement or appreciation for the additional maintenance needs that a vehicle used in its service may require above and beyond the wear and tear commonly experienced by the typical private passenger vehicle. R.D. at 35 (citing Tr. at 75).

#### Exceptions

In its Exceptions, Rasier-PA argues that the ALJs’ finding that it failed to demonstrate that it has a plan or even a commitment to accept responsibility for vehicle safety overlooks the substantial evidence. Rasier-PA explains that it requires all vehicles to pass a comprehensive annual safety inspection as required by the Commission’s Regulations at 52 Pa. Code § 29.402 (vehicle equipment requirements) and 52 Pa. Code § 29.405 (state inspection), which will be performed by Pennsylvania official inspection stations. Rasier-PA Exc. at 22. Rasier-PA submits that the state inspection provides riders with a baseline of safety that is consistent with other vehicles on the road. *Id*. at 23. Rasier-PA points out that its vehicles will be marked pursuant to the Commission’s *July 2014 ETA Order* and will be subject to routine inspections by Commission enforcement officers and can be taken off the road if they do not meet the “state’s standards.” *Id.* at 22.

Rasier-PA also submits that it goes above state inspection standards by requiring the use of high quality vehicles, as demanded by their riders, by following up on customer feedback. Rasier-PA presents an example of a vehicle that is aesthetically displeasing or makes excessive noise that may pass inspection, but will not pass the standards of its customers. *Id.* at 23.

Rasier-PA excepts to the ALJs’ finding of a lack of “any acknowledgement or appreciation for the additional maintenance needs that a vehicle used in its service may require above and beyond the wear and tear commonly experienced by the typical private passenger vehicle.” *Id.* at 24 (citing R.D. at 36). Rasier-PA argues that there is no evidence on the record that their Operators’ vehicles will have higher mileage than typical passenger vehicles and there is no justification to treat them differently than drivers of private passenger vehicles. Rasier-PA Exc. at 24.

JB Taxi’s Reply Exception regarding vehicle safety is the same as its response to the issue of driver qualifications. JB Taxi opines that the Commission should support the findings and conclusion in the Recommended Decision that the Applicant does not have a plan or method of compliance. Again, JB Taxi argues that the ill-defined responsibilities to be assigned to third-party contractors or employees of the parent company, as they may be assigned from time to time, should not be accepted by the Commission in these circumstances as demonstrating that the public will be protected. JB Taxi R. Exc. at 4.

#### Disposition

Upon review, we shall grant Rasier-PA’s Exceptions. We agree with Rasier-PA that it is inaccurate to characterize the Applicant as having no plan or commitment to accept responsibility for its role in ensuring vehicle safety. Rasier-PA has set forth a base-level framework for vehicle safety that includes annual PennDOT inspections and customer feedback. Thus, we shall grant the Exceptions pertaining to the finding that the Applicant failed to set forth any evidence related to vehicle safety.

However, we shall require conditions for operation in addition to those set forth in the Application, as amended. First, the Applicant shall ensure that the vehicles used in its operation successfully pass PennDOT inspections pursuant to 52 Pa. Code § 29.405 annually. Rasier-PA shall maintain verifiable records thereof for three years.

Second, Rasier-PA shall ensure that the vehicles used in its operation remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402(1) and (2) and 29.403. Consistent with our Regulations, these vehicles shall be subject to periodic inspection as set forth at 52 Pa. Code §§ 29.406 and 29.407. Rasier-PA shall maintain verifiable records thereof for three years.

Third, Rasier-PA shall not permit the use of vehicles older than eight model years, consistent with 52 Pa. Code § 29.314(d).[[12]](#footnote-12) Rasier-PA shall maintain verifiable records thereof for three years.

Furthermore, in order to facilitate random and routine inspections, we will require that vehicles used in the Applicant’s proposed service be properly marked in compliance with Sections 29.71 and 29.72 of our Regulations, 52 Pa. Code §§ 29.71-29.72, while operating in Stages 1, 2 or 3 of the proposed service. [[13]](#footnote-13) As noted in the *July 2014 ETA Order*, these markings are critical for our enforcement staff to visually identify the vehicles used in the public service. The use of placards, or other distinguishable markings, on the outside of the vehicle are acceptable.

We also note that our current regulations require that “vehicles be owned or leased by the certificate holder.” 52 Pa. Code § 29.101(a)(5). However, under the experimental service proposed by Rasier-PA, it will neither own nor lease the vehicles used in the service. Although, historically, the Commission has disallowed this structure to prevent abuses and to ensure accountability, we believe that in this instance, there is sufficient reason to waive this regulatory requirement. Notwithstanding Rasier-PA’s lack of ownership or lease interest, Raiser-PA is required to ensure that the vehicles operated in this service are in compliance with the Commission’s vehicle safety and insurance requirements, as explained above. We believe that by waiving the vehicle ownership/lease requirement, the Commission is able to make room for this new and innovative service, while still ensuring the safety of the passengers using this service.[[14]](#footnote-14)

### Evidence of Fitness – Employees (52 Pa. Code § 41.14(b)(2))

#### Standard

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission will evaluate “[w]hether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.” 52 Pa. Code § 41.14(b)(2).

The Protestants submitted that there was no testimony presented regarding the experience or qualifications of any of the Applicant’s employees concerning their technical fitness. The Protestants averred that the testimony in this proceeding indicated that the Applicant does not have any employees and shares space in Pittsburgh with its parent company, whose employees only use the office on a part-time basis. Accordingly, the Protestants argued that the Applicant has failed to meet its burden of proof with regard to technical fitness. *See, e.g.,* Joint Protestants Brief at 26-27.

#### Recommended Decision

The ALJs found that the Applicant failed to provide any evidence regarding the technical expertise of any people who will be working on behalf of the Applicant. The ALJs stated that, although the Applicant provided the name of the person who would be the new associate general manager of “Uber Pittsburgh,” that role was described as a business development position, not an operational position with definite responsibility for regulatory compliance. R.D. at 36. The ALJs observed that the new associate general manager is an employee of Uber, not an employee of the Applicant. The ALJs opined that the Applicant does not have any employees and the record is silent as to its contractual relationship with Uber or the provision of service which will be provided to it by Uber. *Id.*

#### Exceptions

Rasier-PA argues that it is entirely irrelevant to its technical fitness whether it has employees. Rasier-PA explains that its witness, Mr. Gore clearly explained that the Applicant will contract with Uber to have employees to execute on regulatory responsibilities. Rasier-PA. Exc. at 25 (citing Tr. at 264). Rasier-PA states that these functions include operating office hours, assisting operators, handling complaints, auditing documents and suspending drivers. Rasier-PA Exc. at 25 (citing Tr. at 197, 250, 263 and 309). Rasier-PA avers that contrary to the comment in the Recommended Decision that no one is responsible for regulatory compliance, Rasier-PA’s witness testified that the general manager of Uber Pittsburgh is responsible for regulatory compliance in connection with the ETA. Rasier-PA Exc. at 25 (citing Tr. at 204-205, 263). Rasier-PA adds that the general manager will be assisted by other members of the Uber Pittsburgh operations team, including the driver operations managers, operations and logistics coordinators and marketing or community managers. Rasier-PA Exc. at 25 (citing Tr. at 263).

#### Disposition

Upon review, we find that the relationship between Rasier-PA and Uber for the provision of services in Pennsylvania is relevant to the approval of the Application. Rasier-PA is a wholly owned subsidiary of Uber and the sole member of both Rasier-PA and Uber is Travis Kalanick. R.D. at 42; Tr. at 53. Thus, Uber has an “affiliated interest” with the Applicant pursuant to Section 2101 of the Code, 66 Pa. C.S. § 2101.[[15]](#footnote-15)

The Applicant proposes to use Uber employees to facilitate operational functions such as regulatory compliance, assisting Operators, handling complaints, auditing documents, and suspending drivers. Mr. Gore testified generally that the current general manager in Pittsburgh, Jennifer Krusius, and an operations team will be handling some of these responsibilities. We find the argument that Uber and its employees have successfully started and operated similar ventures in Washington D.C. and cities throughout the United States to be persuasive.  However, we believe it is unclear what the roles and responsibilities of Uber’s personnel will be, in terms of the provision of services to the Applicant -- especially in relation to the provision of the handling of customer related complaints.

In pertinent part, Section 2102 of the Code, 66 Pa. C.S. § 2012, states:

(a) No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

The services that Uber will provide to the Applicant certainly appear to be management, supervisory, and other types of services that fall within the broad language of Section 2102. Pursuant to this Order, we will require the Applicant to submit for our review an affiliated interest agreement between it and any affiliates, including Uber. Further, as part of the Compliance Plan required in this Order, Rasier-PA shall include information related to the identities and job descriptions of the Uber employees and/or third party contractors, including the office locations of these persons, who are expected to provide services to Rasier-PA during the two-year certification period for the experimental service*.*

### Insurance (52 Pa. Code § 41.14(b)(3))

**a. Original and Amended Application**

In its original Application, Rasier-PA stated that it will require Operators to provide proof of valid and current liability insurance on all vehicles used in offering its services in at least the amounts specified in 75 Pa. C.S. §§ 1702and 1711, which sets forth insurance requirements for drivers in Pennsylvania. This policy will cover Operators when they are not available through the App and are using their vehicles for personal reasons. Rasier-PA also states that it will submit to the Commission proof of adequate insurance evidencing policies and coverage that comply with and exceed the minimum standards required by the Commission at 52 Pa. Code §§ 32.11 and 41.21 (which sets forth the insurance requirements for passenger carriers in Pennsylvania and provides that a certificate to operate will not be issued until an insurer provides a certificate of insurance to the Commission, *i.e.*, a Form E). Application at 5.

Rasier-PA summarizes its proposed compliance with the insurance requirements in 52 Pa. Code §§ 32.11 and 41.21 as follows:

*$1 million of liability coverage per incident.*This policy covers the Operator’s liability from the time an Operator accepts a trip request through the App until the completion of a trip. This policy is in excess to the Operator’s own policy, but it acts as primary insurance if the Operator’s policy is not available for any reason, covering from the first dollar.

*$1 million of uninsured/underinsured motorist coverage per incident.* In the event that another motorist causes an accident with an Operator’s vehicle and does not carry adequate insurance, this policy of $1 million per incident covers bodily injury. This is important to ensure that passengers are protected in a hit and run situation.

*$50,000 of contingent comprehensive and collision insurance*. If an Operator holds personal comprehensive and collision insurance that is found not to apply, this policy covers physical damage to that vehicle that occurs during a trip, for any reason, up to $50,000 and with a $1,000 deductible.

*$50,000/$100,000/$25,000 of contingent coverage between trips.*During the time that an Operator is available but between trips, most personal liability insurance will provide coverage. However, the Operator is also backed by an additional policy that covers liability for bodily injury up to $50,000/individual/accident with a total of $100,000/accident and up to $25,000 for property damage. This policy is contingent to a[n] Operator’s personal insurance policy, meaning it will only pay if the personal auto insurance completely declines or pays zero.

Application at 5-6.

During the hearing, Rasier-PA presented the testimony of Henry Gustav Fuldner, Uber’s director of insurance and risk management, and amended the insurance provisions of the Application. Tr. at 514-516, 554-555, and 563.

Mr. Fuldner testified that Rasier-PA’s commercial automobile insurance carrier is James River Insurance Company (James River). James River is a property and casualty carrier principally domiciled in Ohio and is on the list of eligible surplus lines carriers maintained by the Pennsylvania Department of Insurance. According to Mr. Fuldner, James River is rated as A-minus by A.M. Best, a provider of credit ratings of insurance companies, with a financial size category indicating a policy holder surplus of $250 million to $500 million. Mr. Fuldner asserted that the outlook of future ratings for James River is positive. Further, Mr. Fuldner testified that James River filed the Form E with the Commission in compliance with the *July 2014 ETA Order*. Tr. at 513-514.

Mr. Fuldner testified that during Stages 1, 2, and 3, 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 on to the system until transportation services have been completed. Tr. at 514-516, 662-663. An exception to this proposal, to provide primary coverage during all three stages, would be if an Operator secures a policy that is specifically designed for for-hire transportation. According to Mr. Fuldner, in that situation Rasier-PA’s coverage would be excess to the Operator’s primary policy. Tr. at 662-663.

Under the Applicant’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 his or her use of the vehicle in connection with the use of the vehicle for hire. Tr. at 516.

Mr. Fuldner stated that, for all three stages, the Applicant proposes to provide $25,000 of first party medical benefits and $10,000 of first party wage loss benefits, as required by Pennsylvania law. Tr. at 515. In addition, Rasier-PA proposes to comply with 75 Pa. C.S. §§ 1701 to 1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirements for first party coverage of the driver of certificated vehicles under 75 Pa. C.S. § 1711.[[16]](#footnote-16) Tr. at 662.

For Stage 1, the Applicant proposes coverage consistent with 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. For Stages 2 and 3, the Applicant proposes to provide $1 million of third party liability insurance at a combined single limit, including property damage and bodily injury. Additionally, Mr. Fuldner stated that Rasier-PA proposes to maintain $1 million in uninsured/underinsured coverage for bodily injury per incident. Tr. at 515.

Rasier-PA’s proposal for Stages 2 and 3 mirrors the requirements under the *July 2014 ETA Order*. In support, Rasier-PA submitted into the record the $1 million insurance policy of its ETA. Tr. at 578-579, Exhs. 5 and 7. However, because the proposal for insurance coverage for Stage 1 is lower than both the coverage limits originally proposed in the Application and required under the *July 2014 ETA Order*, the policy has not been written and is unavailable. Mr. Fuldner testified that if the Commission approves the Application, Rasier-PA will secure the policy and, if requested, its insurance carrier will file a new Form E. Tr. at 645.

Mr. Fuldner also testified that the Applicant requires Operators to provide proof of insurance before operating on the platform and the Operator’s proof of insurance is checked annually. However, Mr. Fuldner stated that, if the Operator’s insurance or driver’s license would later lapse, it would have no impact on the insurance coverage provided by the Applicant. Tr. at 519, 545, 548 and 579.

The Applicant does not propose to require its Operators to notify their personal insurers that they are operating on the transportation network platform and to maintain records of such notifications. Rasier-PA Brief at 33-55. According to Mr. Fuldner, this requirement would be inappropriate and unduly burdensome. Tr. at 516-517.

**b. Recommended Decision**

The ALJs found that the Applicant failed to demonstrate that the insurance policy which it holds or intends to obtain in connection with the proposed service will, with any degree of certainty, provide continuous coverage of the vehicles used in the operation. Instead, the ALJs found that the evidence shows that there are significant uncertainties about the quality of the Applicant’s proposed policy which, at the very least, would result in delays in meeting any claims made by either a passenger or a driver. The ALJs stated that it is unclear that either drivers or passengers have sufficient information to make a knowing judgment about their coverage for any injuries which may result or their exposure to the claims of others. R.D. at 37.

The ALJs observed that the Applicant does not propose any independent or ongoing verification of its drivers’ personal insurance policies beyond requesting a copy of each driver’s financial responsibility card or declarations page at the outset and on the renewal date of the policy listed on such card. R.D. at 37 (citing Tr. at 546-548). The ALJs also noted that the Applicant does not propose to examine its drivers’ personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those polices may be subject to termination or new rates if their insureds become Rasier-PA drivers. R.D. at 37 (citing Tr. 546-548, 651). The ALJs explained that Rasier-PA does not intend to review drivers’ policies despite the testimony of the Applicant’s witness that if a driver had a policy with a livery exclusion, that would raise a concern to Applicant. R.D. at 37 (citing Tr. 677-678).

The ALJs observed that the Applicant’s witness testified that the coverage proposed by the Applicant during Stage 1 would be primary, however the driver’s coverage would need to specifically recognize the driver’s use of the vehicle in connection with the TNC in order to be valid in certain circumstances. The ALJs noted that, unless there is a livery exclusion or a specific endorsement, the Applicant’s policy during stage one would provide primary coverage. R.D. at 37-38 (citing Tr. at 557-558, 561, 581).

The ALJs explained that Rasier-PA does not propose to direct its drivers to notify their personal auto insurers, in writing, of their intent to operate in the Applicant’s service, or to maintain a copy of any such notices from their drivers to their insurers for any period of time. R.D. at 38 (citing Tr. at 516). The ALJs found that the Applicant does not propose to advise its drivers to check with their personal auto insurers about potential gaps in coverage or potential changes in or cancellation of their personal auto insurance policies, beyond stating at an undefined point and manner that their drivers’ personal auto policies may not provide coverage. R.D. at 38 (citing Tr. 538, 545, 568-569).

The ALJs submitted that the evidence of record establishes that a person becoming a driver for the Applicant faces potential changes in that person’s personal auto insurance, including possible cancellation or an increase in rates. The ALJs stated that drivers may also incur personal financial liability resulting from gaps in the coverage proposed by Applicant, when considering the personal insurance coverage the driver may have and any livery exclusions in such insurance. R.D. at 38 (citing Tr. at 539-540, 686-691). The ALJs also stated that a person becoming a driver for the Applicant faces possible personal financial responsibility as a result of terms and conditions Rasier imposes on its drivers in its agreements with them. R.D. at 38 (citing Tr. 686-690; JB Taxi Exh. A).

The ALJs found that the documents the Applicant has proposed to share with its drivers and its training program for its drivers are woefully inadequate as to:   
(a) how it will educate its drivers concerning the three stages of insurance; and (b) the differences in the insurance stages and the provided coverages. Specifically, the ALJs explained that Rasier-PA did not demonstrate how it will educate its drivers, in a uniform and standard way, regarding their personal liability exposure under its agreements with them or that may result from its proposed insurance. Nor did it explain how to access the Applicant’s proposed three stages of insurance, or to inform passengers or third parties of the insurance process in the event of an accident or claim. R.D. at 38 (citing Tr. 552-554, 587-590, 686-691).

The ALJs observed that, in contrast to standard underwriting and claims handling practices in the insurance industry, the Applicant does not inform its insurer about its drivers or their records, and its insurer is not the initial contact on claims. R.D. at 39 (citing Tr. 616-618, 655, 713-715, 729-730). The ALJs opined that the evidence demonstrates that the Application does not propose adequate insurance and the insurance policy that the Applicant provided clearly reveals there are other gaps and uncertainties in its proposed insurance coverage that merit the disapproval of the Application. R.D. at 38-39.

The ALJs noted that Rasier-PA’s agreements with its drivers and passengers have a variety of disclaimers and exclusions that may negate the coverage Applicant purports to provide. The ALJs cited the following terms:

The Company … has no responsibility or liability for any transportation services provided to you [the passenger] by such third parties [the Rasier/Uber driver].

By entering into this Agreement and using this Application or Service, you [the passenger] agree that you shall… hold the Company … its subsidiaries [and] affiliates… harmless from and against any and all claims … arising out of or in connection with … your use … of the Application or Service.

You acknowledge and agree that the entire risk arising out of your use of the application and service, and any third party services or products remains solely with you, to the maximum extent permitted by law.

The Company and/or its licensors shall not be liable for any loss, damage or injury which may be incurred by you, including but not limited to loss, damage or injury arising out of, or in any way connected with the service or application….

R.D. at 39 (citing JB Taxi Exh. A at 2, 7-8). The ALJs observed that Rasier-PA never explained the impact of such separate agreements with its drivers and passengers on its insurance coverage, but instead, provided a conclusion, without any support, that the agreements and disclaimers of liability would not affect the Applicant’s liability, despite the fact that Applicant’s agreements suggest just the opposite. R.D. at 39.

The ALJs explained that Rasier-PA’s proposed coverage, at least for Stages 2 and 3, is primary only as to a driver’s personal auto insurance, not any commercial policy or endorsement. The ALJs reasoned that if that exists, the Applicant’s coverage would become contingent to the other coverage and that this potentially raises questions whether any coverage exists in various circumstances. R.D. at 40.

**c. Exceptions**

Rasier-PA excepts to the ALJs’ findings that the Applicant’s insurance proposal is inadequate. Rasier-PA argues that it is committed to maintaining liability insurance coverage in amounts that meet or exceed the Commission’s requirements. In addition, the Applicant contends that the ALJs misstated several elements of its Application. Rasier-PA Exc. at 30.

The Applicant reiterated the provisions of the Application, as amended, and explained that the coverage fully complies with the Commission’s insurance requirements under 52 Pa. Code § 32.11(b).[[17]](#footnote-17) Further, it argues that for Stages 2 and 3, the $1 million of third party liability and uninsured/underinsured coverage is “best in class” and mirrors the provisions of the *July 2014 ETA Order*. Rasier-PA Exc. at 32-33.

In addition, the Applicant submits that the Recommended Decision fails to appreciate the filing of a Form E, which certifies that a motor carrier has obtained insurance coverage as required by Pennsylvania law, and Commission Orders or Regulations. Rasier-PA emphasized that having a Form E on file with the Commission would require or expand the policy to pay amounts required in Commission Orders regardless of any other policy language. Rasier-PA Exc. at 33; Tr. at 645, 657-658.

The Applicant also argues that the ALJs improperly determined that the insurance proposal cannot be truly evaluated without viewing the policy. In support, Rasier-PA notes that the policy for Stages 2 and 3 was admitted into the record. Regarding the Stage 1 policy, the Applicant submits that Form E requires the insurer to provide a copy of the policy to the Commission, upon request. Further, Rasier-PA argues that the Commission will have the opportunity to fully evaluate compliance with conditions related to insurance following approval of the Application pursuant to 52 Pa. Code § 3.381(e). Rasier-PA Exc. at 33-34.

Next, the Applicant argues that the ALJs’ description of the insurance notifications to Operators is inaccurate and wrongfully concludes that Operators are not sufficiently educated about the coverage that is provided or how to submit claims. The Applicant references Mr. Fuldner’s testimony about Rasier-PA’s efforts to educate its Operators regarding insurance-related items including: (1) notifying Operators that their personal insurance policy may not afford coverage in connection with their use of the platform; (2) requiring Operators to acknowledge the notification that their personal automobile policy may not provide coverage; (3) recommending that, if Operators have questions about coverage, they should contact their personal auto insurance carriers;   
(4) informing Operators of the insurance provided by Rasier-PA; and (5) advising Operators how to download evidence of insurance and instructing them to furnish such certificates or other evidence of Rasier-PA’s insurance in the event of an accident. *Id.* at 34-35 (citing Tr. 535-539, 545, 549-550, 586, 637, 663).

Additionally, the Applicant contends that the Recommended Decision completely mischaracterizes the testimony of Mr. Fuldner on the issue of whether an Operator who had a livery exclusion would raise a concern. Rasier-PA states that Mr. Fuldner was responding to a hypothetical livery exclusion, which supposedly provides no coverage if a vehicle is ever used for commercial purposes. According to the Applicant, Mr. Fuldner replied that if such an exclusion existed, that concern would be addressed by Rasier-PA’s current practice of informing Operators of possible coverage problems with their personal policy and to investigate it with their insurer. *Id.* at 35.

Next, Rasier-PA criticizes what it considers to be the Insurance Federation’s proposal to require Operators to notify their personal insurers of their participation in the transportation network platform and to maintain records of such notifications. In addition to claiming that the notification requirement for Operators is inappropriate and burdensome, Rasier-PA asserts it has no purpose because coverage for all three stages will be primary – unless the Operator’s personal policy recognizes his or her use in for-hire transportation services – and the Applicant does not propose to rely on the Operator’s personal policy. Furthermore, the Applicant argues that the notification requirement is not customary in other uses of personal vehicles in the course of business (e.g., for home health care services, real estate services, pizza delivery, newspaper delivery, etc.). *Id.* at 36-37.

Lastly, the Applicant contends that the Recommended Decision erroneously discusses issues pertaining to Rasier-PA’s insurer. For example, the Applicant argues that Findings of Fact related to the information Rasier-PA will not be providing to James River, including driver and vehicle lists, and the impact of the absence of that information on the provided coverage, are not pertinent. According to Rasier-PA these matters are between James River and Rasier-PA and should be of no concern to the Commission. Rasier-PA also points to the testimony explaining the financial stability of James River and the process by which the insurer charges Rasier-PA on a per mile basis as opposed to a vehicle list basis. *Id.* at 37-38.

In its Replies to Exceptions, the Insurance Federation argues that, in light of the many amendments made to the Application during the hearing, the Commission should adopt a “trust but verify” stance in examining the proposed insurance. The Insurance Federation contends that the Commission should reject the Applicant’s invitation to evaluate insurance compliance following approval of the Application. Rather, protection of the public requires examination of insurance coverage prior to approval. Insurance Federation R. Exc. at 4.

Further, the Insurance Federation argues that the information provided by the Applicant at the hearing suggested serious gaps in coverage such as an exclusion in the event a driver has a commercial policy. Next, the Insurance Federation asserts that the Applicant’s agreements with its Operators may supersede whatever insurance Rasier-PA may provide. Additionally, the Insurance Federation notes what it considers to be questions and oddities surrounding the relationship between James River and the Applicant. The Insurance Federation states that James River is a surplus lines carrier not covered by the Guaranty Fund, has limited experience in auto insurance, and does not appear to be the entity handling claims. *Id.* at 5.

Next, the Insurance Federation argues that the Applicant provides no meaningful notice to its Operators about potential insurance issues. It contends that the minimal and misleading notice outlined during the hearing was never set forth in writing and can easily be lost in the fine print of other forms. With regard to the discussion of requiring Operators to notify their insurers of their participation in transportation services, the Insurance Federation explains that such a notification was required in the *July 2014 ETA Order*. The Insurance Federation contends that this notification serves an enormous purpose for drivers and the public by ensuring that the driver does not jeopardize his or her personal coverage or car loan or lease. In addition, it helps ensure that the driver does not end up with personal or family financial exposure or result in gaps in insurance that would otherwise be necessary to compensate third parties in the event of an accident. Insurance Federation R. Exc. at 6.

The Insurance Federation suggests that the Commission should require the following information to ensure compliance with the Applicant’s insurance proposal:

* Clarification of what insurance coverage Rasier-PA will provide and of its relationship with its surplus lines carrier (starting with who handles claims and how reserves are set).
* How it will reconcile its Operator agreements with the insurance coverage it provides.
* Documentation of a formal program of educating its drivers on their insurance issues, including notification of their personal vehicle insurers and the handling of claims.

*Id.* at 9.

In its Replies, JB Taxi argues that the Applicant has failed to carry its burden of proof of demonstrating compliance with insurance requirements because it cannot produce a copy of the policy related to Stage 1. Because the Applicant could not produce the policy and its specific terms, exclusions and requirements, the Commission should uphold the Recommended Decision’s finding that the Applicant has not demonstrated protection of the public. JB Taxi R. Exc. at 5.

In their Replies, the Harrisburg Carriers contend that the Applicant’s insurance is inadequate and references the ALJs’ findings with respect to the importance of notice to a personal automobile insurer and the failure of the Applicant to provide actual policy language related to the Stage 1 coverage. Harrisburg Carriers R. Exc.   
at 6-7.

**d. Disposition**

Upon review of the record, and given the experimental nature of the service, we agree with Rasier-PA that it has provided sufficient evidence to show a commitment to maintaining insurance coverage in amounts that meet or exceed our regulatory requirements. However, we concur with the ALJs that the proposal related to notification and education of its drivers with respect to personal auto coverage is inadequate. Additionally, the absence of a requirement that drivers notify their personal auto insurers of their intent to operate in the Applicant’s service creates potential uncertainties or gaps in coverage. Accordingly, we shall grant the Applicant’s Exceptions, in part, deny them, in part, and impose additional requirements as a condition of approval of the Application consistent with this Opinion and Order.

As to Stage 1, Rasier-PA’s proposal matches the insurance requirements under 52 Pa. Code §§ 32.11(b) and 41.21 ($35,000 in liability insurance, split in the amounts of $15,000 bodily injury per person, $30,000 bodily injury per accident and $5,000 property damage per accident). For Stages 2 and 3, the proposal exceeds our current regulatory requirements ($1 million of third party liability insurance at a combined single limit, including property damage and bodily injury, and $1 million in uninsured/underinsured coverage for bodily injury per incident). In addition, for all three Stages, the Applicant proposes to provide $25,000 of first party medical benefits and $10,000 of first party wage loss benefits and to comply with 75 Pa. C.S. §§ 1701 to 1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirements for first party coverage of the driver of certificated vehicles under 75 Pa. C.S. § 1711.

Accordingly, the Commission will accept the Applicant’s proposed insurance levels during these periods as being in compliance with our Regulations. However, consistent with the provisions set forth in our *July 2014 ETA Order*, we will impose several additional requirements.

First, Rasier-PA’s insurance during Stages 1 through 3 must be the primary insurance coverage, *regardless* of any insurance coverage held by its Operators. During the hearing, Rasier-PA amended its Application to agree that its coverage shall be primary during Stage 1 and not contingent upon the Operator’s personal liability insurance, except where an Operator secures a policy that is specifically designed for transportation network services or other for-hire transportation. In those situations, Rasier-PA proposes that its coverage would be excess to the Operator’s primary policy. However, because the Commission views Stage 1 as a period when the driver is “on the clock” and working for the Applicant, it is Rasier-PA’s insurance (and not the driver’s insurance) that must be primary during Stage 1 regardless of any Operator insurance coverage, just as it is during Stages 2 and 3.

Second, with respect to Stage 0, the Commission accepts Rasier-PA’s proposal to require its Operators to provide proof of valid and current liability insurance, consistent with 75 Pa. C.S. §§ 1702 and 1711, during this period.

However, in order to avoid any confusion regarding the status of a driver’s personal insurance coverage, we will require Rasier-PA to direct all operators/drivers to notify their insurer of their intent to operate in Rasier-PA’s service. Specifically, Rasier-PA shall direct drivers, conspicuously in written or electronic form, to contact their personal automobile insurer regarding any policy impacts that may be caused by operating the vehicle for TNC use. As part of this notification, drivers shall verify that they agree to make such contact with their personal insurer within a specified period of time. Such verification may be in written or electronic form, and must include the driver’s signature (either electronic or written). Rasier-PA shall maintain verifiable records thereof for three years.

Third, Rasier-PA shall clearly and adequately inform drivers, in writing, of the levels of insurance coverage provided during Stages 1, 2 and 3, including whether it is providing comprehensive and collision coverage during service, and instruct drivers regarding the appropriate protocol to be followed in case of an accident. Rasier-PA shall maintain verifiable records thereof for three years in writing or electronic format.

In adopting these conditions, we reject the Applicant’s Exceptions pertaining to the requirement for drivers to notify their personal insurers of their participation in the Applicant’s service and to maintain records of such notifications. We are concerned that drivers may not understand that this commercial use of their personal vehicles could void their existing personal vehicle insurance, which would otherwise apply when their vehicle is not being used for TNC purposes.  To protect these drivers from unintentionally operating without insurance, we will require Rasier-PA to have drivers agree, in writing, during sign up to report the commercial operation of personal vehicles to their insurance companies within a specified period of time.

We agree with the Insurance Federation that the notification serves a critical purpose for drivers and the public by ensuring that the driver’s services with Rasier-PA do not result in circumstances of lapsed personal coverage and uninsured motorists on our highways. Without such a notification procedure, an Operator could potentially jeopardize his personal coverage, and possibly car loans or leases, if his insurer deems the service to be commercially-related. Additionally, the Operator could be exposed to significant personal liability in the event of an accident or claim during the personal use of the vehicle. The time for verifying coverage limits should not be when a claim is made, but rather prior to the time that insurance coverage may be necessary. The notification provision articulated above is a measure to ensure such verification.

In our *October 2014 ETA Order*, we further explained the importance of the notice provision as follows:

Notwithstanding Rasier’s arguments, we believe that it is prudent and appropriate to continue the notification requirement established in our July 24, 2014 ETA Order. Contrary to Rasier’s allegations, we believe that this notice requirement provides a public safety and driver protection benefit. By Rasier’s own admission, it is on the cusp of facilitating major change in the transportation industry through the development and implementation of new and innovative technology. This development warrants transparency to all affected entities, including insurers of Rasier’s drivers. Transparency should not be sacrificed based on claims that a driver notification requirement is not convenient for transportation network operators.

Contrary to Rasier’s arguments, the notification requirement does not interject Rasier into the contractual relationship between the driver and the driver’s personal insurer. The notification requirement does not require Rasier to negotiate its driver’s personal policies, as Rasier would suggest, and does not interject Rasier into the driver/insurer relationship. Rather, the notice is intended 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 vehicle.

Although the assimilation of TNC operations into the vehicle insurance market is ultimately a question to be resolved by the insurance industry, we would be remiss to allow Rasier-PA to side step this issue by not sharing such information with the drivers.  We encourage and support efforts by Uber, Rasier-PA and the auto insurance industry to create products that prevent any gap in coverage.

Fourth, consistent with 52 Pa Code § 32.11(a), Rasier-PA may only operate if its insurance carrier provides acceptable evidence of insurance (a Form E Certificate of Insurance) to the Commission. *See* *Insurance Corporation of New York v. Antrom*, 2008 Pa. Super. LEXIS 5616 (by filing the Form E certification, “the insurer certifies to the Commission that it is providing coverage in accordance with the law, notwithstanding any potentially contrary terms contained in an individual policy of insurance”). Moreover, given that Rasier-PA has a parent company of a different name, we stress that it is Rasier-PA, as the regulated utility, that must have acceptable evidence of insurance on file with the Commission. *Love-Diggs v. Tirath*, 911 A.2d 539 (Pa. Super. 2006); *Metro Transportation Co., et al. v. Pa. PUC*, *et al.*, 912 F.2d 672 (3rd Cir. 1990). The Form E Certificate shall affirm primary coverage for Stage 1 at coverage liability levels consistent with Commission regulations for motor carriers, plus $1,000,000 coverage for Stages 2 and 3 as described by Rasier-PA in its Application as amended. In no event shall the levels of coverage in any stage fall below the standards set forth in 52 Pa. Code § 32.11(b).[[18]](#footnote-18)

### Propensity to Operate Safely and Legally (52 Pa. Code § 41.14(b))

**a. Standard**

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission may evaluate “[a]n applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.” 52 Pa. Code § 41.14(b)(5).

**b. Recommended Decision**

The ALJs opined that it is appropriate for the Commission to withhold authority to operate where the record demonstrates that the Applicant is not likely to comply with the Commission’s regulations in the future, which impairs the Commission’s ability to protect public safety. The ALJs explained that the standard is “whether there is demonstrated a persistent disregard for, flouting or defiance of the Public Utility Code or Commission Orders.”[[19]](#footnote-19) The ALJs noted that, while the Applicant apparently has not yet launched operations in Allegheny County, Uber was ordered to “cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certified drivers in their personal vehicles….” R.D. at 42.[[20]](#footnote-20) The ALJs submitted that Uber continued to use its digital platform in Allegheny County through Rasier LLC – another subsidiary wholly owned by Uber that does not have Commission authority to operate – even when it was enjoined to do so. The ALJs stated that it is difficult to conclude that Uber, or its subsidiaries, have any respect for the authority of the Commission or that it will submit to the Commission’s authority in the future. R.D. at 41-42.

**c. Exceptions**

Rasier-PA argues that 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 shown a “persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission.”[[21]](#footnote-21) Rasier-PA submits that the record is replete with examples of its propensity to operate safely and legally, including obtaining a brokerage license and submitting an ETA application in response to Commission staff recommendations; compliance with the *July 2014 ETA Order*; and meeting or exceeding the requirements for authority. Rasier-PA avers that instead of considering the record evidence as a whole, the ALJs simply referred to the continued operation of a Rasier-PA affiliate after the issuance of the Commission’s cease and desist order. Rasier-PA Exc. at 27-28.

Rasier-PA states that it is well established that an applicant’s prior unlawful operation does not preclude the Commission from granting authority in a subsequent proceeding. Rasier-PA opines that the Commission may grant additional authority if it finds that such unlawful operations resulted from a good-faith misunderstanding of the law. Rasier-PA notes that its witness testified that the operations that continued after the cease and desist order have been conducted by Rasier LLC, a different wholly-owned subsidiary of Uber. The Applicant explains that its witness’ understanding of the Commission’s jurisdiction and current regulations is that the Rasier LLC activity does not address the operations under the instant Application. Rasier-PA points out that its witness also noted that Rasier-PA received emergency temporary authority the same day as the cease and desist order was issued and it was substantially in compliance with the conditions of that authority immediately. Rasier-PA Exc. 28-29 (citing Tr. at 81-83). Rasier-PA argues that, under these circumstances, it would have been a misfortune to pull a needed service off the market in Allegheny County. Rasier-PA Exc. at 29.

Rasier-PA submits that neither it nor its parent or affiliates have been found by the Commission to have violated a provision of the Code or Commission Regulations. Rasier-PA explains that the pending Complaint proceeding involves allegations that have not been adjudicated by the Commission.[[22]](#footnote-22) Rasier-PA opines that Uber was under no obligation to stop licensing its software product to a subsidiary upon the filing of the Complaint and it is far from clear under Pennsylvania law that licensing an application for this purpose constitutes the brokering of transportation service. Rasier-PA avers that the fact that bills have been introduced by the General Assembly to capture these services suggests that they are not necessarily covered by the Code. Rasier-PA Exc. at 30.

In its Reply Exceptions, JB Taxi states that, even after receiving emergency authority, the Applicant appears to disregard the requirement related to insurance notifications to drivers and the corresponding directive to notify insurance providers. JB Taxi argues that the clear suggestion from the ongoing operation is that the Applicant feels free to disregard its compliance responsibilities so long as it continues to debate as to whether the responsibilities are appropriate. JB Taxi R. Exc. at 4.

The Harrisburg Carriers aver, *inter alia*, that theApplicant seems to believe that “substantial compliance” with the *July 2014 ETA Order* means a barely decipherable tariff and inadequate insurance. Harrisburg Carriers R. Exc. at 5. They point to the Recommended Decision regarding Rasier-PA’s Application to provide service in Allegheny County. The Harrisburg Carriers explain that the ALJs found the Applicant’s refusal to comply with ALJs’ Order to provide transaction/ride information to be “a willful disregard of the direction of the presiding officers” and “[t]o permit the Applicant to disregard an order of the ALJs, when a remedy was available, would destroy the effectiveness of Commission proceedings and undermines the due process rights of the other parties.” *Id.* at 6 (citing Allegheny Application R.D.). The Harrisburg Carriers argue that, when evaluating the propensity of this Applicant to operate legally, the Commission should easily find that the Applicant has given the Commission no reason to believe it will act with any respect toward the authority of the Commission. Harrisburg Carriers R. Exc. at 6.

**d. Disposition**

As we discussed in the *July 2014 ETA Order*, Rasier-PA cannot completely distance itself from the ongoing Complaint proceeding involving Uber. Additionally, we are troubled by the fact that Uber’s other subsidiary, Rasier LLC, decided to continue to operate without Commission authority within Allegheny County after the issuance of the *Uber Cease and Desist Order*. Nonetheless, we recognize that the Applicant is a separate corporate entity than Rasier LLC[[23]](#footnote-23) and that the allegations of wrongdoing by those entities have not yet been adjudicated.

Even if it were determined that the Applicant operated in violation of a Commission order, this fact, by itself, would not necessarily preclude it from obtaining lawful authority in a subsequent proceeding before the Commission. *See Brinks, Inc. v. Pa. PUC*, 500 Pa. 387, 456 A.2d 1342 (1983). In *Brinks*, the Pennsylvania Supreme Court explained that, if past unlawful operations were deemed conclusive of an applicant’s fitness, the Commission would be powerless to grant a motor carrier application despite the applicant’s demonstration of its fitness to perform services beneficial to the public.  “Such an automatic disqualification, moreover would improperly view the Commission’s statutory obligation to determine an applicant’s fitness prior to granting a contract carrier permit as a punitive measure directed against the individual wrongdoer rather than as a safeguard, the primary purpose of which is the protection of the public.”   *Id.* at 1344.  Here, there is sufficient evidence of the Applicant’s fitness independent of any finding pertaining to the actions of Uber or its other subsidiary Rasier LLC.

As the ALJs correctly noted, the standard is whether there is demonstrated a persistent disregard for, flouting or defiance of the Public Utility Code or Commission Orders. We find that the evidence presented does not satisfy that standard. In addition, we are requiring Rasier-PA to satisfy certain conditions in order to obtain a certificate of public convenience. By taking these additional steps, Rasier-PA must demonstrate to the Commission its commitment to comply with the Code, the Commission’s Regulations and Orders. If, on the other hand, Rasier-PA fails to demonstrate compliance with these conditions, no certificate will issue pursuant to this Order.

As part of this Compliance Plan filing, Rasier-PA shall submit the trip information required in the *Interim Order*. Rasier-PA may mark such information as confidential pursuant to Commission Regulations. The objections raised by Rasier-PA to the submission of such data to the Commission are fully resolved in the companion Allegheny Application Order that we simultaneously issue with this Order. If marked confidential, this information will be treated according to our existing confidentiality practices and Regulations. If such data is not presented, the statewide authority addressed in this Order will not be issued.

As explained by the ALJs, the experimental service regulation under 52 Pa. Code § 29.352 provides the Commission with leeway for approving a motor carrier service not contemplated under the regulations on a short-term basis. Section 29.352 provides time for the certificate holder to concretely demonstrate the public benefit and safety of the proposed service, as well as the ability to maintain an appropriate relationship with the Commission as the regulatory body. Pursuant to this Regulation, the Commission has flexibility to impose additional requirements on an applicant. Through this Order, we are exercising this flexibility to impose various compliance and reporting requirements as a condition of our approval of the Applicant’s operation as an experimental service. Accordingly, we view the propensity to operate safely and legally as an ongoing obligation of the Applicant during the period of its experimental service term. If the Applicant violates the conditions articulated in Appendix A of this Order, which includes the compliance and filing requirements, the Commission will take appropriate enforcement action.

Accordingly, we will grant the Applicant’s Exception.

### Financial Fitness (52 Pa. Code § 41.14(b)(1))

1. **Application**

In support of its Application, Rasier-PA submitted a one-page document titled Statement of Financial Position – Forecast from August 2014 to July 2015 (Financial Statement), which was admitted into the record. The Financial Statement is identical to the one previously submitted in support of its ETA, which only pertains to service between points in Allegheny County. Tr. at 59; Rasier-PA Exh. 2.

The Financial Statement projects operating revenue of $1,914,322, total operating expenses of $3,255,819 and a net loss of $1,341, 497. According to Mr. Gore’s testimony, Rasier-PA expects similar results if service is provided in other parts of Pennsylvania. Mr. Gore did not know how operating revenues and expenses were projected because the Financial Statement was prepared by Uber’s finance and accounting team on behalf of Rasier-PA. *Id.*

In its Brief, Rasier-PA contended that affiliates of Rasier-PA provide transportation network services in over 160 cities and over 45 countries around the world. Further, it states that the proposal in the Application is based on the model successfully deployed in Washington, D.C. Based on the extensive experience of its affiliates throughout the world and the existing Commission authority of its ETA in Allegheny County, Rasier-PA argued it is presumed to have the technical and financial fitness to provide the proposed service. Rasier-PA Brief at 25 (citing Tr. at 58, 512).

In their Brief, the Joint Protestants argued that the evidence of financial fitness was virtually non-existent. Joint Protestants Brief at 26. According to the Joint Protestants, the projected operating loss results in an operating ratio which is not sustainable from a financial perspective and “suggests that the Applicant may be willing to subsidize its losses in order to engage in illegal predatory price cutting to drive its competitors out of business.” *Id.* Additionally, the Joint Protestants questioned the credibility of the financial evidence pointing to the projected office expense of $2 million despite testimony that Applicant has no employees and calls the Pittsburgh office of its parent company its operational base. *Id.[[24]](#footnote-24)*

1. **Recommended Decision**

In their Recommended Decision, the ALJs highlighted the projected loss of $1.3 million for the 12-month period ending July 2015 and Mr. Gore’s lack of knowledge of how the figures were derived. The ALJs concluded that the Applicant provided no meaningful information which would permit the Commission to conclude that it has sufficient financial resources to meet its responsibilities. R.D. at 36.

1. **Exceptions and Replies**

The Parties did not specifically address financial fitness in their Exceptions and Replies.

1. **Disposition**

We begin by recognizing that the Application before us requests authority to operate an experimental service. Given the experimental and start-up nature of the venture in areas previously unserved by the Applicant, it would not be unusual for Rasier-PA to incur a loss during the first year of operation.  Moreover, given the relatively short duration of the requested authority (two years), we are not convinced by the argument that the projected losses are unsustainable. By the end of the two-year certification period, both Rasier-PA and the Commission will be able to determine whether the service in question will be financially viable on a long-term basis. During the two-year certification period, of course, this Commission will not accept the argument that costs excuse Rasier-PA from providing reasonable and adequate service and facilities, as required by Section 1501 of the Code.

Our statement of policy states that we will consider “whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. § 41.14(b)(1). In this case, the Applicant has or will obtain a license for the Uber App and it will use employees of Uber, pursuant to an affiliated services agreement. It has or will obtain insurance. It will not own the vehicles in question, and will not employ drivers. Considering the unique facts of this application for experimental service, we find that the Applicant has established that it has the capital, equipment, and other resources necessary to serve the territory requested.

The Applicant is wholly-owned by Uber and has access to the financial resources of the parent corporation. Moreover, we find the argument that the Applicant has successfully operated similar ventures in Washington D.C. and cities throughout the United States to be persuasive.  Accordingly, we reverse the ALJs findings with respect to financial fitness.

With regard to assessment reporting requirements, Rasier-PA, its affiliates and third-party contractors shall comply with 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.

### Rates

**a. Applicant’s Proposal**

A closely related issue to Financial Fitness is the rates that the Applicant proposes to charge. In its Application, Rasier-PA explained that it proposes to offer service at no-charge or charge a fare. The Applicant stated that if a fare is charged, it will disclose the fare calculation method, the applicable rates being charged and provide the option for an estimated fare to the passenger before booking the ride. Upon completion of a trip, Rasier-PA will transmit an electronic receipt to the passenger’s email address or App documenting the details of the trip. Application at 3.

In response to the *July 2014 ETA Order*, Rasier-PA filed a tariff which indicates*, inter alia,* that rates will be calculated on the basis of the distance and time between the point of origination and the destination and includes a minimum base fare. The tariff provides that rates may increase or decrease in real time for the purpose of balancing supply and demand, such as for special events or holidays. The tariff also provides that a flat fee may be charged for trips to specific destinations and that cancellation or cleaning fees may be applied as necessary, with advance notice to the customer. Applicant Exh. 3.

**b. Recommended Decision**

In their Findings of Fact, the ALJs stated that, based on the tariff filed by the Applicant, fares cannot be calculated by solely using the information contained in the proposed tariff and the tariff has no information upon which anyone can make an evaluation as to whether or not the rates are just and reasonable. R.D. at 15 (citing Tr. at 290, 485-486, 488-489). The ALJs observed that the Applicant utilizes a minimum fare, but did not include it in its tariff and that the Applicant decided “for business reasons” not to include the base fare, including base mileage and time, in its tariff. R.D. at 15 (citing Tr. at 148-149, 302). The ALJs noted that the Applicant uses “surge pricing,” whereby it increases prices at times of extreme demand and that the higher rate can be as much as 300 percent of the regular rate that is charged when there is normal demand. R.D. at 15 (citing Tr. at 146, 220). The ALJs found that the Applicant may change the rate applicable to mileage and to time at any point it deems necessary, without going back and changing the tariff that is on file with the Commission. R.D. 15 (citing Tr. at 290-291).

**c. Exceptions**

In its Exceptions, Rasier-PA submits that the Recommended Decision neglects to find that the prospective customer always knows the rate in advance and may obtain an estimate before booking the ride. Rasier-PA Exc. at 39 (citing Applicant Exhibit A). Rasier-PA avers that the ALJs place undue emphasis on the flexibility of its proposed tariff and fail to appreciate the benefit of such structure on the riding public. Rasier-PA points out that its witness, Mr. Gore, explained that this flexibility is important to balance supply and demand and discussed the surge pricing that is in use at times of extreme demand. Rasier-PA explains that consumers also know in advance if surge pricing is in effect and are free to find another form of transportation if they do not want to pay the higher rates in that situation. Rasier-PA Exc. at 39-40 (citing Tr. at 146-148, 270). Rasier-PA notes that the Recommended Decision did not suggest that the Commission reject the tariff, but filed this Exception to ensure the Commission has this information when reviewing the Application. Rasier-PA Exc. at 40.

JB Taxi argues that Section 1302 of the Code, 66 Pa. C.S. §1302, requires a determination by the Commission that the rates, as well as all terms and conditions that accompany the application of those rates, are just and reasonable. JB Taxi explains that the tariff fails to provide any basis upon which the Commission could satisfy the requirements for a finding necessary under the just and reasonable standard. JB Taxi opines that notification to the customer of a fare, term or condition, that fails to meet the standard of just and reasonable, should not justify a departure from that statutory standard and the protections intended for the benefit of consumers relying upon public utility services. JB Taxi notes that the Applicant fails to provide any explanation as to why its tariff cannot set forth its rates, terms and conditions. JB Taxi R. Exc. at 5.

**d. Disposition**

In support of its Application, the Applicant submitted a copy of its approved tariff filed pursuant to the *July 2014 Order*. The ALJs issued Findings of Fact but did not recommend a rejection of the proposed tariff. According to the proposal, Rasier-PA will advise a prospective customer of the applicable rates being charged and of the option of receiving an estimated fare before booking the ride.

The proposal has similarities with the tariff we approved in *Application of Megabus Northeast, LLC, t/a Megabus.com*, Docket Nos. A-2010-2191780 and A-6412531 (Order entered May 5, 2011) (*Megabus*), which involved a pricing system designed to maximize revenues in line with level of demand. In *Megabus*, the applicant established a range of rates, between $1 per trip at the low end of the range and a specified maximum rate representing the highest rate that could be charged for a specific trip between two cities. The actual passenger price depends on the date of the booking relative to the date of travel and the level of demand for the particular trip. In approving the tariff, we noted that the fare information will be publicly available and will put potential customers on notice regarding how the rates will be set so that passengers may make purchasing decisions that are appropriate for them. *Megabus*, at 11.

Although the Applicant’s proposed tariff does not contain a maximum fare amount, it provides the same level of information contained in *Megabus* that will allow passengers to make an informed decision about the rate and whether to use the service or not. We find this proposal to be reasonable. In view of the competitive nature of the TNC market, the fact that this is an application for Experimental Service and because this proposal is similar to the approved tariff filed with the authorization of Rasier-PA’s ETA, we will not require that fixed rates be set in the tariff.

Rasier-PA shall maintain a tariff with the Commission setting forth the terms and conditions of service, in a form consistent with the *July 2014 ETA Order*. As part of its Compliance Plan, Rasier-PA shall fully explain its proposed surge pricing policy during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1 *et seq*.

### Record Keeping

Rasier-PA shall maintain verifiable records of service for a period of two years after the service was provided. These records shall include: trip information (date, time, origination, destination, and fare); vehicle information under 52 Pa. Code   
§ 29.314(c); and the identity and driver’s license numbers of all drivers.

In addition, Rasier-PA shall comply with the accident reporting requirements of 52 Pa. Code § 29.44. Consistent with this Regulation, Rasier-PA shall maintain verifiable records thereof for a period of one year from the date of the accident.

All books, records, and facilities of Rasier-PA, and of any affiliated entities as they relate to certificated services provided by Rasier-PA, are subject to Commission inspection, audit and investigation pursuant to Sections 331(a), 501 and 506 of the Code. 66 Pa. C.S. §§ 331(a), 501 and 506. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and regulations.

### Waiver of Regulations

The following Regulations for call and demand service are hereby waived unless expressly retained by this Order: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). All other Regulations applicable to call and demand service shall apply unless waived or modified by this Order. Any Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Rasier-PA.

### Compliance Plan and Periodic Audits

Rasier-PA shall file a Compliance Plan within thirty days of the entry date of this Opinion and Order. The Compliance Plan shall demonstrate how Rasier-PA will achieve compliance with the conditions set forth at Appendix A, as described in this Opinion and Order. In no event will achievement of the conditions be accomplished later than thirty days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Rasier-PA employees, Uber employees and/or third-party contractors who will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Rasier-PA must also submit to the Commission or ensure delivery of an applicable Form E and an updated tariff consistent with this Opinion and Order.

Thereafter, the Commission will rule upon the completeness and adequacy of Rasier-PA’s Compliance Plan and the concurrent filings within thirty days. If found to be in compliance with each condition set forth in Appendix A, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Rasier-PA to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352. After issuance of a Certificate of Public Convenience, Rasier-PA shall submit quarterly reports demonstrating its continuing compliance with each certificate condition.

In the event that Rasier-PA declines to accept the certificate conditions specified in this Order or the Commission rejects the Compliance Plan or the concurrent filings required in this Order, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Rasier-PA in the *July ETA 2014 Order* and the *October 2014 ETA Order* shall be immediately revoked.

# Conclusion

Based upon our review of the record, and given the experimental nature of the service, we find that Rasier-PA has sustained its burden of proving a public demand or need for the proposed service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally.[[25]](#footnote-25) We have fully reviewed Rasier-PA’s ETA history as well as the record in this case, and on this basis have shaped conditions that allow for this exciting new business model to thrive in the Commonwealth, while at the same time ensuring that the necessary public protections are in place. Therefore, the authority we grant today for Experimental service shall not take effect until Rasier-PA has demonstrated full and complete compliance with the conditions set forth in this Opinion and Order.  If Rasier-PA rejects these conditions, it, along with any affiliates shall no longer be authorized to provide Experimental service in the Commonwealth. Accordingly, we shall grant Rasier-PA’s Exceptions, in part, and deny them, in part; deny the Joint Protestants’ Exceptions; reverse the Recommended Decision; and grant the Application subject to terms and conditions; all consistent with this Opinion and Order. We stress that our discussion herein is limited to the Application before us and shall have no bearing on any pending enforcement actions for past conduct; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed on October 14, 2014, by Rasier-PA LLC are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions filed on October 14, 2014 by Executive Transportation Company, Inc.; Aceone Trans Co.; AF Taxi, Inc.; AG Taxi, Inc.; AGB Trans, Inc.; Almar Taxi, Inc.; ATS Cab, Inc.; BAG Trans, Inc.; BNG Cab Co.; BNA Cab Co.; BNJ Cab, Inc.; Bond Taxi, Inc.; BSP Trans, Inc.; Double A Cab Co.; FAD Trans, Inc.; GA Cab, Inc.; GD Cab, Inc.; GN Trans, Inc.; God Bless America Trans, Inc.; Grace Trans, Inc.; IA Trans, Inc.; Jarnail Taxi, Inc.; Jaydan, Inc.; LAN Trans, Inc.; LMB Taxi, Inc.; MAF Trans, Inc.; MDS Cab, Inc.; MG Trans Co.; Noble Cab, Inc.; Odessa Taxi, Inc.; RAV Trans, Inc.; Rosemont Taxicab Co., Inc.; S&S Taxi Cab, Inc.; SAJ Trans, Inc.; Saba Trans, Inc.; SF Taxi, Inc.; Society Taxi, Inc.; Steele Taxi, Inc.; TGIF Trans, Inc.; V&S Taxi, Inc.; VAL Trans, Inc.; VB Trans, Inc.; and VSM Trans, Inc.; BM Enterprises, Inc., t/a A.G. Taxi; Bucks County Services, Inc.; Dee Dee Cab Company; Germantown Cab Company; Ronald Cab, Inc., t/a Community Cab; Shawn Cab, Inc., t/a Delaware County Cab; and Sawink, Inc., t/a County Cab, are denied.

3. That the Recommended Decision issued on September 25, 2014, by Administrative Law Judges Mary D. Long and Jeffrey A. Watson is reversed.

4. That the Application of Rasier-PA, LLC for motor common carrier of persons in experimental service between points in Pennsylvania filed on June 2, 2014, is hereby approved, granting the following right:

To transport, by motor vehicle, persons in the experimental service of passenger trips between points in Pennsylvania, excluding trips which originate or terminate at points in the Counties of Allegheny, Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Montour, Northumberland, Philadelphia and Union and in that portion of the County of Luzerne which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County.

The transportation authority is subject to the terms and conditions set forth herein.

5. That Rasier-PA, within thirty (30) days of entry of this Opinion and Order, Rasier-PA, LLC shall submit the following to the Commission:

a. A Compliance Plan demonstrating how Rasier-PA, LLC will achieve compliance with the conditions set forth in Appendix A and this Opinion and Order. The Plan shall be include the identities and office locations of the employees or individuals who will be responsible for regulatory compliance.

b. A Form E Certificate of Insurance evidencing compliance with the Commission’s insurance requirements and coverage amounts set forth in this order, *regardless* of any insurance coverage held by Rasier-PA’s drivers or operators.

c. A tariff consistent with this Opinion and Order. Instructions for filing of a tariff can be found at: [*www.puc.pa.gov/general/onlineforms/pdf/Initial\_Tariff\_Instructions.pdf*](http://www.puc.pa.gov/general/onlineforms/pdf/Initial_Tariff_Instructions.pdf).

d. An affiliated interest agreement between Rasier-PA, LLC and Uber Technologies, Inc. and any affiliates pursuant to Section 2102 Code, 66 Pa. C.S. § 2102.

e. Trip information required under the Interim Order dated July 31, 2014, in Rasier-PA-LLC’s Allegheny County application at Docket No. A-2014-2416127.

6. That, within thirty (30) days of Rasier-PA, LLC’s compliance with the filing requirements set forth in Ordering Paragraph No. 5 above, the Commission will rule upon the completeness and adequacy of the filings with respect to the requirements set forth in Appendix A and this Order. If found to be in compliance with Appendix A and this Order, a Certificate of Public Convenience shall issue evidencing the Commission’s approval of the right to operate as above determined.

7. That after issuance of a Certificate of Public Convenience, Rasier-PA, LLC shall submit quarterly reports to the Commission’s Bureau of Technical Utility Services demonstrating its continuing compliance with each certificate condition.

8. That in the event Rasier-PA, LLC has not, on or before thirty (30) days from the date of entry of this order, complied with the requirements set forth in Ordering Paragraph No. 5 above, or that the filings required under Ordering Paragraph No. 5 are not approved by the Commission, the Application shall be dismissed without further proceedings and the Emergency Temporary Authority granted to Rasier-PA, LLC at Docket No. A-2014-2429993 shall be immediately revoked.

9. That the Certificate of Public Convenience will be valid until abandoned, until two (2) years from the date of issuance, or until the Commission enacts regulations governing the new class of service, whichever occurs first.

10. That the grant of Experimental Service Authority shall have no bearing on the final disposition of ongoing compliance proceedings.

11. That the certificate holder shall comply with all provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all regulations applicable to call and demand service with the exception of the following regulations which are waived: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the certificate. Additionally, the Commission will continually review the service to ensure that it is necessary or proper for the service, accommodation, convenience or safety of the public.

12. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

13. That Rasier-PA, LLC shall be subject to assessments pursuant to 66 Pa. C.S. § 510 and that Rasier-PA, LLC, its affiliates and third-party contractors shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.

14. That Rasier-PA, LLC shall maintain the records mandated in this Opinion and Order for the time periods specified for each category of records.

15. That the vehicles used in the experimental service provided by Rasier-PA, LLC shall be subject to inspection by Commission enforcement officers; and that the books, records and facilities of Rasier-PA, LLC and of any affiliated entities as they relate to certificated services provided by Rasier-PA, LLC shall be subject to inspection, audit and investigation pursuant to 66 Pa. C.S. §§ 331(a), 501 and 506.

16. That the authority granted herein, to the extent that it duplicates authority now held or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

17. That a copy of this Opinion and Order be served on the Commission’s Bureau of Technical Utility Services.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 13, 2014

ORDER ENTERED: December 5, 2014

**Appendix A**

**Rasier-PA -- Experimental Authority Certificate Conditions**

1. **Insurance**
2. Pursuant to 52 Pa. Code § 32.11(a), a Form E Certificate of Insurance shall be filed by Rasier-PA LLC (Rasier-PA) affirming primary coverage for Stage 1 at coverage liability levels consistent with Commission regulations for motor carriers, plus $1,000,000 coverage for Stages 2 and 3 as described by Rasier-PA in its Application as amended. In no event shall the levels of coverage in any stage fall below the standards set forth in 52 Pa. Code § 32.11(b).
3. Rasier-PA shall clearly and adequately inform drivers, in writing, of the levels of insurance coverage provided during Stages 1, 2 and 3 and instruct drivers regarding the appropriate protocol to be followed in case of an accident. Rasier-PA shall maintain verifiable records thereof for three years in writing or electronic format.
4. Rasier-PA shall direct drivers, conspicuously in written or electronic form, to contact their personal automobile insurer regarding any policy impacts that may be caused by operating the vehicle for Transportation Network Company use. As part of this notification, drivers shall verify that they agree to make such contact with their personal insurer within a specified period of time. Such verification may be in written or electronic form, and must include the driver’s signature (either electronic or written). Rasier-PA shall maintain verifiable records thereof for three years.
5. **Driver Integrity**
6. Rasier-PA shall continue to undertake driver background checks of the scope and breadth described in the Application and consistent with 52 Pa. Code

§§ 29.503 and 29.505 both at the time of driver sign-up and annually thereafter. Rasier-PA shall maintain verifiable records thereof for two years.

1. Rasier-PA shall undertake drivers’ history checks consistent with 52 Pa. Code

§ 29.504 both at the time of driver sign-up and annually thereafter. Rasier-PA shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Rasier-PA shall maintain verifiable records thereof for three years.

1. **Vehicle Safety**
2. Rasier-PA shall ensure that drivers’ vehicles successfully pass PennDOT inspection pursuant to 52 Pa. Code § 29.405 annually. Rasier-PA shall maintain verifiable records thereof for three years.
3. Rasier-PA shall ensure that drivers’ vehicles remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402 (1) and (2) and 29.403. Consistent with Commission Regulations, vehicles shall be subject to periodic inspection as set forth at 52 Pa. Code §§ 29.406 and 29.407. Rasier-PA shall maintain verifiable records thereof for three years.
4. Rasier-PA shall not permit the use of vehicles older than eight model years, consistent with 52 Pa. Code § 29.314(d). Rasier-PA shall maintain verifiable records thereof for three years.
5. Rasier-PA shall require that all vehicles be marked as specified at 52 Pa. Code §§ 29.71 and 29.72 while operating in Stages 1, 2 or 3.
6. **Recordkeeping, Reports and Audits**
7. Rasier-PA shall maintain verifiable records for service for a period of two years after the service was provided. These records include: trip information (date, time, origination, destination, and fare); vehicle information under 52 Pa. Code § 29.314(c); and the identity and driver’s license numbers of all drivers.
8. Rasier-PA shall comply with the accident reporting requirements of 52 Pa. Code § 29.44. Consistent with this regulation, Rasier-PA shall maintain verifiable records thereof for a period of one year from the date of the accident.
9. Rasier-PA, its affiliates and third-party contractors shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.
10. As part of the Compliance Plan filing, Rasier-PA shall submit for Commission review an affiliated interest agreement between it and Uber Technologies, Inc. (Uber). The Agreement shall include information related to the identities and job descriptions of the Uber employees and/or third-party contractors, including the office location of those persons, who are expected to provide services to Rasier-PA during the two-year certification period.
11. As part of its Compliance Plan filing, Rasier-PA shall submit the trip information required under the Interim Order dated July 31, 2014 issued at Docket No. A-2014-2416127. Rasier-PA may mark such information as confidential pursuant to the Commission’s regulations. If marked confidential, this information will be treated according to existing Commission confidentiality practices and regulations. Any other issues related to non-compliance with the July 31, 2014 Order shall be referred to the Commission’s Bureau of Investigation and Enforcement for further action as deemed appropriate.
12. Rasier-PA acknowledges that the Commission is authorized, pursuant to 66 Pa. C.S. §§ 331(a), 501 and 506, to inspect, audit and investigate any books, records and facilities of theirs and any affiliated entities as they relate to certificated services provided by Rasier-PA. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and regulations.
13. Rasier-PA shall maintain a tariff with the Commission setting forth the terms and conditions of service, in a form consistent with the Commission’s Emergency Temporary Authority Order, issued on July 24, 2014 at Docket No. A-2014- 2429993. As part of its Compliance Plan, Rasier-PA shall fully explain its proposed surge pricing policy during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1 *et seq*.
14. **Waiver of Regulations**
15. The following Commission Regulations for call and demand service are hereby waived unless expressly retained by this Order: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). All other Commission Regulations applicable to call and demand service shall apply unless waived or modified by this Order.
16. Any Commission Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Rasier-PA.
17. **Compliance Plan and Periodic Audits**
18. Rasier-PA shall file a Compliance Plan within thirty (30) days of entry date of this Order. The Compliance Plan shall demonstrate how Rasier-PA will achieve compliance with the conditions set forth herein. In no event will achievement of the conditions be accomplished later than thirty (30) days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Rasier-PA employees, Uber employees and/or third-party contractors that will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Rasier-PA must also submit to the Commission or ensure delivery of an applicable Form E, an updated tariff and the trip information required in the Interim Order at Docket No.

A-2014-2416127 dated July 31, 2014, as specified at condition D.5.

1. The Commission thereafter will rule upon the completeness and adequacy of Rasier-PA’s Compliance Plan within thirty (30) days. If found to be in compliance with each stated condition, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Rasier-PA to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352.
2. After Commission approval of the Compliance Plan, Rasier-PA thereafter shall submit quarterly reports demonstrating its continuing compliance with each certificate condition.
3. In the event that Rasier-PA declines to accept the certificate conditions specified in this Order or the Commission rejects the Compliance Plan, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Rasier-PA by Order entered July 24, 2014 at Docket No. A-2014-2429993 shall be immediately revoked.

1. Concord Limousine, Inc. (Concord) is also listed as a Protestant to these Exceptions, however, there is no record of their protest in this proceeding. Accordingly, the reference to Concord as a Protestant in these Exceptions will be disregarded. [↑](#footnote-ref-1)
2. Although the Insurance Federation filed a protest to Rasier-PA’s Allegheny Application, there is no record of the Insurance Federation filing a protest in this proceeding.  Generally, only Parties have a right to file Replies to Exceptions in proceedings before the Commission.  52 Pa. Code § 5.535.  Here, the ALJs held a joint hearing proceeding for both this Application and Rasier-PA’s Allegheny County application.  The Insurance Federation, through its counsel, participated in the joint proceeding and presented the testimony of one witness.  During the hearing, there was no indication that the Insurance Federation’s participation was limited or restricted to the Allegheny Application.  Furthermore, there was no objection to the Insurance Federation’s cross-examination of Rasier-PA’s witness pertaining to testimony of insurance issues of statewide significance.  Additionally, the ALJs made thirteen findings of fact in the Recommend Decision in this proceeding based on the testimony of the Insurance Federation’s witness.  R.D. at 23-24.  Although Rasier-PA filed Exceptions to the ALJs’ finding that the Applicant’s insurance proposal was inadequate, it did not object on the basis that the Insurance Federation was an improper Party to the statewide Application proceeding.  Accordingly, under the unique circumstances of this proceeding, we will address the arguments raised in the Insurance Federation’s Replies to Exceptions.   [↑](#footnote-ref-2)
3. On October 27, 2014, Rasier-PA filed a letter stating that the Replies to Exceptions by the Harrisburg Carriers should be disregarded because they were filed beyond the due date set forth in the Secretarial Letter dated September 25, 2014. On October 29, 2014, the Harrisburg Carriers filed correspondence urging the Commission to disregard Rasier-PA’s letter of October 27, 2014. The Secretarial Letter accompanying the Recommended Decision set a compressed time-frame which required the filing of Replies to Exceptions by October 20, 2014, or five days after the filing of Exceptions. Our Regulations, 52 Pa. Code § 5.535, normally require the filing of Replies within ten days of the date that Exceptions are due. Additionally, we note that the Secretarial Letter required the Applicant to file its Exceptions by October 14, 2014, or nineteen days after the issuance of the Recommended Decision. Thus, the Secretarial Letter compressed the time frame for the filing of Exceptions by only one day compared with the normal filing requirement time of twenty days under 52 Pa. Code § 5.534. Here, the Harrisburg Carriers filed their Replies within the due date set forth in Section 5.535 but not the compressed time frame of the Secretarial Letter. Pursuant to 52 Pa. Code   
   § 1.2(a), we will allow the late filing of the Replies to Exceptions because there is no indication the filing affects the substantive rights of the Applicant or any other Parties. [↑](#footnote-ref-3)
4. Section 29.352 of the Commission’s Regulations, 52 Pa. Code § 29.352, which pertains to certification for the provision of experimental service, provides the following:

   § 29.352. Experimental service   
     
    In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or 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. An application for a certificate or amendment shall state that it is an application for an experimental service. Holders of experimental certificates shall abide by this chapter except those which the Commission shall explicitly state do not apply. Holders of experimental certificates shall abide by an additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate. A certificate for experimental service shall be valid only until the service is abandoned, until 2 years have elapsed from the time the certificate was approved or until the Commission enacts amendments to this chapter pertaining to the new class of service represented by the experimental service, whichever event occurs first. [↑](#footnote-ref-4)
5. *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility**Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No.

   P-2014-2426846 (Order entered July 24, 2014) (*Uber Order*). [↑](#footnote-ref-5)
6. *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, PA*, Docket No.   
   A-2014-2429993 (Order entered October 17, 2014) (*October 2014 ETA Order*). [↑](#footnote-ref-6)
7. While the Policy Statementis not a binding norm, it announces the Commission’s tentative intentions for the future.  *See Pa. Human Relations Comm’n v. Norristown Sch. Dist.*, 473 Pa. 334, 349-350, 374 A.2d 671, 679 (1977). [↑](#footnote-ref-7)
8. As noted by the ALJs, there are numerous Protestants to this Application that have collaborated on the presentation of evidence and argument in this matter. R.D. at 27. The ALJs explained that the Protestants have raised unique arguments in their opposition to the Application, but no Protestant derives an individual benefit from taking or not taking a certain position. Therefore, the ALJs stated that, unless it is relevant to a particular argument, they would not attribute any particular issue to an individual Protestant. *Id.*  We will do the same in our Opinion and Order. [↑](#footnote-ref-8)
9. However, we note the pending *Uber Complaint Proceeding*, which involves the issue of whether the activities of Uber fall within the definition of “broker.” Our decision herein has no impact on the determination of the unanswered question of whether, under Pennsylvania law, Uber’s licensing of its App constituted the brokering of transportation service during the time periods alleged in the *Uber Complaint Proceeding*. [↑](#footnote-ref-9)
10. Based on the record, it appears that Ms. Gonzalez-Bartoli resides inside the proposed service territory. [↑](#footnote-ref-10)
11. *See also, Application of Frontier Van Lines Moving and Storage, Inc.*, Docket No. A-00122436 (Order entered June 29, 2007) (Commission found that the applicant established public need or demand despite the absence of witnesses for several of the counties in which the applicant proposed to provide service). [↑](#footnote-ref-11)
12. We note that the current version of Section 29.314(d) of our Regulations, 52 Pa. Code § 29.314(d), establishes an age limit of eight model years but does not impose an odometer limit for call and demand service. Pursuant to our Final Rulemaking Order in *Vehicle List, Age, and Mileage Requirements for Taxis and Limousines, 52 Pa. Code §§ 29.314(c)-(d), 29.333(d)-(e)*, Docket No. L-2013-2349042 (Order entered November 19, 2014) (*Rulemaking Order*), we approved an amendment to Section 29.314(d) to prohibit the use of vehicles in call and demand service that exceed either of the following conditions: (1) ten model years for conventional vehicles or twelve model years for alternatively fueled vehicles; or (2) 350,000 odometer miles. These amendments are subject to additional review and approval pursuant to the Commonwealth’s regulatory review process. *Rulemaking Order* at 38. When these amendments become effective, any changes shall be applicable to Rasier-PA. [↑](#footnote-ref-12)
13. Consistent with the *July 2014 ETA Order*, we will use the following terminology for reference purposes:

    * Stage 0: Driver is driving for personal reasons and the App is closed.
    * Stage 1: Driver opens the App and is logged on 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 the passenger exits the vehicle.

    [↑](#footnote-ref-13)
14. As discussed below, we will also waive additional regulations, which we consider to be inapplicable to the experimental service proposed in this Application, consistent with 52 Pa Code § 29.352. [↑](#footnote-ref-14)
15. 66 Pa. C.S. § 2101, provides, in pertinent part:

    **(a) General rule.--**As used in this part “affiliated interest” with a public utility means and includes the following:

    (1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility.

    (2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.

    [↑](#footnote-ref-15)
16. 75 Pa. C.S. § 1711 provides in part:

    **(a) Medical benefit.--**An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title, except recreational vehicles not intended for highway use, motorcycles, motor-driven cycles or motorized pedalcycles or like type vehicles, registered and operated in this Commonwealth, shall include coverage providing a medical benefit in the amount of $5,000. [↑](#footnote-ref-16)
17. 52 Pa. Code 32.11(b) provides:

    (b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle 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. 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). [↑](#footnote-ref-17)
18. In light of this fourth requirement, we need not address the Applicant’s Exceptions regarding the ALJs’ determination that the insurance proposal cannot be truly evaluated without viewing the policy. Furthermore, we believe that the Form E filing requirement, specifying the mandatory levels of liability coverage for drivers, would supersede any inconsistent provisions contained in agreements between Rasier-PA and its Operators. [↑](#footnote-ref-18)
19. As an example, the ALJs cited *Application of Adamo Limousine, Ltd.*, Docket No. A-00115789 (Opinion and Order entered June 2, 2000). [↑](#footnote-ref-19)
20. Quoting *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility**Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No.

    P-2014-2426846 (Order entered July 24, 2014) (*Uber Cease and Desist Order*). [↑](#footnote-ref-20)
21. Rasier-PA cites *Application of ATM Corporation of America, t/d/b/a Classic Limousine Transportation*, Docket No. A-00112166 (Order entered September 24, 1996). [↑](#footnote-ref-21)
22. The pending Complaint proceeding is *Pa. PUC v. Uber Technologies, Inc.*, Docket No. C-2014-2422723. [↑](#footnote-ref-22)
23. The Commonwealth Court in *Rosemont Taxicab Co., Inc. v. Philadelphia Parking Authority*, 68 A.3d 29, 37 (Pa. Cmwlth. 2013), explained that the plain language of 52 Pa. Code § 41.14(b) directs a review only of the “applicant’s” compliance history. “Indeed, we have cautioned that the Commission and the courts may not disregard the independent entity of the corporate applicant.” *Id.* (internal quotations omitted). [↑](#footnote-ref-23)
24. The various Protestants filed similar arguments in their briefs. [↑](#footnote-ref-24)
25. Because the Recommended Decision determined that the Applicant failed to satisfy its burden of proof, it did not address the Protestants’ burden under 52 Pa. Code § 41.14(c). As the Applicant correctly notes, however, the only testimony offered by the Protestants about the effect of the proposed service on their operations was from representatives of Philadelphia taxicabs. Rasier-PA Brief at 23. The Application does not pertain to a request for experimental service in the City of Philadelphia because it would directly conflict with the jurisdiction of the Philadelphia Parking Authority pursuant to 53 Pa. C.S. §§ 5701, *et seq*. Thus, we find that the Protestants have failed to satisfy their burden of proof under Section 41.14(c). Additionally, we emphasize that our Order does *not* authorize Rasier-PA to provide experimental service originating or terminating at points in the City of Philadelphia. [↑](#footnote-ref-25)