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Chairman Robert F. Powelson
Pennsylvania Public Utility Commission
400 North Street
3rd Floor, Room N-304
Harrisburg, PA 17120

Re: Rasier-PA, LLC Compliance Plan
A-2014-2416127
A-2014-2424608

Dear Chairman Powelson:

As you are aware, I represent many of the Protestants in the above matters. This letter will respond to the Compliance plan submitted by Rasier in response to the Commission's order of December 5, 2015, and will supplement our Motion for Reconsideration in the above matters.

Uber continues to make headlines across the globe for all the wrong reasons: drivers raping passengers, executives threatening journalists, surge pricing during a hostage crisis, employees spying on customers...the list goes on. In Pennsylvania, UberX continues to knowingly and willfully operate illegally in Philadelphia and its surrounding counties despite its clear lack of authority to do so and in defiance of the Commission's explicit orders. This alone should be enough to deny Rasier-PA ("Rasier") the authority it seeks. However, if this is not enough to persuade the Commission to deny Rasier a Certificate of Public Convenience ("CPC"), then Rasier's utterly inadequate Compliance Plan should do the trick.

Insurance

Rasier's proposed insurance plan does nothing to address the insurance concerns of the Commission. To start, individual drivers and their vehicles are not listed on the Form E filed with the Commission, so it is unclear whether Rasier's insurer will even cover drivers utilizing Uber Technologies Inc.'s ("Uber") digital platform.

Additionally, requiring drivers to provide proof of liability insurance once per year is insufficient. A driver could easily provide Rasier with proof of insurance on January 1, cancel

his policy the next day and then drive without insurance for the remainder of the year without any consequences. Rasier cannot rely on the chance that a driver will get stopped by police--this responsibility is Rasier's, not the driver's. Rasier does not provide any details as to how it will ensure that drivers maintain insurance coverage. Rasier must be held responsible if its drivers do not carry proper insurance because it will be the certificated entity. Drivers are not licensed or regulated by the Commission and the Commission has no power to sanction drivers for noncompliance. Rasier should be required to periodically spot check drivers to make sure they are adequately insured. Such an important issue should not be left to chance.

Rasier does not outline how it will educate its drivers on what to do in the event of an accident. Rasier also does not state whether drivers will carry proof of Rasier's commercial policy in their vehicles or how they will obtain such proof of insurance. Rasier must be required to provide insurance cards to its drivers and instruct its drivers to present proof of Rasier's insurance policy in the event of an accident. Rasier's plan also does not provide where and how insurance claims should be filed. Currently, Uber's accident form instructs drivers to reach out to their personal insurers (see attached). This practice is fraudulent. Because the Commission does not have the authority to penalize drivers, Rasier must be held responsible for drivers' actions.

Also, simply asking drivers to verify that they will review the terms of their insurance policies with their personal insurers is unsatisfactory. Rasier must outline how it is going to ensure that drivers report their commercial activities to their insurance companies and comply with the Commission's regulations. Having a driver certify that he will do so isn't enough. For example, how will anyone find out if a driver does not speak to his insurer? Rasier cannot shift the burden of regulatory compliance into its drivers. Rasier must be responsible for obtaining independent verification from insurers that the drivers did in-fact report their commercial use.

Rasier also does not provide for repercussions if drivers fail to contact their personal insurers. At a minimum, drivers who fail to comply with this requirement should not be permitted to use Uber's platform and Rasier should be held responsible if such a driver is permitted to use the platform. Again, because the Commission is not licensing these drivers, the drivers have no duty to comply with the Commission's regulations. In order to be held accountable to the public, Rasier must be held responsible for the failures of its drivers.

The Commission is playing with fire and putting the public at risk if it grants special treatment to Rasier and approves this insurance plan. The Commission cannot guess about insurance coverage for authorized service or facilitate insurance fraud. The Commission requires each insurance carrier that covers a vehicle providing authorized service to file proof of insurance. This ensures that required coverage will be in place or that insurance fraud is not being committed. Every other carrier must meet this requirement and so should Rasier. Requiring E-form filings for drivers will ensure that every insurance carrier knows it is underwriting motor carrier service and that the Commission is notified when coverage is cancelled so that it may take appropriate action to protect the public.

Driver Integrity

As the recently reported attack of a Philadelphia model by an Uber driver proves, Rasier's background check process has proven to be inadequate and should not be accepted by the Commission. In fact, Uber is currently being sued in Los Angeles and San Francisco over its background check policies because its background check process cannot ensure that the information in the background check report is actually associated with the applicant. As San Francisco District Attorney George Gascon stated: "At the end of the day, you cannot conduct the most comprehensive background check possible if the info you have obtained has nothing to do with the person that is signing on with you to be a driver. It is completely worthless."

Motor carrier service requires people to get into cars with strangers. For this reason, every motor carrier in Pennsylvania has a duty to properly vet its drivers and to maintain ongoing supervision over them. They do this by meeting with prospective drivers face-to-face and verifying identity documents so that they can be assured that an applicant's criminal background check matches the applicant's identity and vehicle registration. In addition, frequent contact with drivers enables motor carriers to identify potential problem drivers before they harm someone. Many problems are avoided when an alert manager sees a driver on a regular basis, notices that something is not quite right and takes him off the street. Drivers may be strangers to the public, but they should not be strangers to a motor carrier if it is doing its job properly.

Rasier barely knows the people who drive its vehicles. All communications by Rasier with its applicants are conducted electronically. Rasier has no way of knowing whether the applicant it checked is actually the person who will be driving. This is exactly what happened in Chicago recently, when an UberX driver charged with raping a passenger used his wife's identity to qualify as an UberX driver and pass a background check. In the Chicago case, Uber blames the driver for his misdeeds, however, it is Uber/Rasier who must be committed to preventing such fraud. The onus cannot be left on the drivers because they are not the ones subject to the Commission's authority. Unless drivers come personally to Uber's offices to obtain background checks, fraud will be rampant. Rasier should be required to conduct criminal background checks in-person in order to avoid this problem.

More importantly, the strangers who sign up to drive for Rasier remain strangers to Rasier because Rasier has little or no contact with them after setting them loose on the public. Rasier has no plan for preventing potential disasters before they happen. The Commission should think twice before allowing Rasier to operate as an absentee owner with no real connection to its drivers. The Commission will bear part of the responsibility for future attacks if it grants special treatment to Rasier that allows it to avoid standards that apply to everyone else.

Vehicle Safety

Absentee motor carriers have other problems. Vehicle safety is an everyday responsibility. Responsible motor carriers inspect their vehicles on a regular and frequent basis. Responsible motor carriers have multiple layers of protection to ensure vehicles maintenance and safety. They use the eyes and ears of their owners, managers, shift supervisors, mechanics, and

professional drivers to prevent problems before they happen. Many accidents and mechanical breakdowns are avoided with hands-on supervision.

Rasier never assumes custody of the vehicles that are used to provide its service, which is why they are not “motor carriers” under the Code. Nonetheless, Rasier’s plan fails to meet the vehicle safety requirements outlined in the Commission’s December 5th Order. Rasier shifts all responsibility for compliance onto its drivers rather than conducting its own vehicle safety checks. Rasier’s drivers are not certified or examined by the Commission, thus they cannot be expected to know the Commission’s rules and regulations. Rasier does not provide any indication that it will educate its drivers on these rules and regulations or ensure that drivers know such rules even exist.

Even if drivers are educated, it is Rasier, not its drivers, who must be held responsible for ensuring vehicle safety. At a minimum, Rasier must detail how it will personally conduct vehicle safety checks. Drivers cannot be relied upon, especially because the Commission does not certify them. Sending a mere email to its drivers instructing them to comply with PennDOT and Commission regulations does not satisfy Rasier’s obligations to the public.

Additionally, Rasier’s plan for markings is wholly inconsistent with the Commission’s regulations. 52 Pa. Code § 29.71 provides that “A common carrier shall paint or affix on each side of each motor vehicle operated in certificated service by him in letters of at least 2 inches in height and at least 1/2 inch in width, the name or registered insignia, if approved by the Commission, of the carrier and the number of the certificate of public convenience as follows: “Pa.P.U.C. No. A—”.

Rasier’s proposed “U” placard, i.e. a piece of paper in the windshield of the vehicle, is neither painted nor affixed and is located inside the vehicle, not on the outside of each side of the vehicle as contemplated by the statute. Additionally, Rasier makes no mention of painting or affixing its CPC number on each side of drivers’ vehicles. Drivers will be able to remove the proposed placard at-will, even when operating in Stages 1, 2 or 3, because it is not affixed. This may lead to drivers fraudulently asserting to the public, insurance companies and/or enforcement agencies that they were not operating in a commercial capacity, thus allowing Rasier to dodge its responsibilities. In addition to these deficiencies, Rasier does not provide how drivers will obtain markings or how Rasier will ensure that the markings are actually displayed by drivers. Yet again, Rasier’s proposal falls short and attempts to shift Rasier’s duties onto its drivers.

The Commission simply cannot expect that Rasier’s vehicle safety plan will succeed if it decides to grant Rasier special treatment and allows it to operate as an absentee carrier. Rasier cannot, as Commission regulations require, certify that the vehicles that provide its service are safe for use on the highways, because it never assumes custody over the vehicles. Custody equals responsibility and is the essence of motor carrier service under the Code. A vehicle can be owned or operated by a third party, but it cannot be performed without assuming custody of the vehicle for the purpose of fulfilling the obligations of maintains, repair and safety.

Agreement between Rasier and Uber

Every motor carrier in Pennsylvania is directly responsible for its own regulatory compliance. Rasier essentially subcontracts all of its responsibility to comply with the Commission's regulations to Uber in the Management and Supervisory Services Agreement (the "Agreement") because Rasier itself does not have any employees. Such an arrangement is unlawful because Uber is not certificated and therefore has no duty to comply with the Commission's regulations. The Agreement is just another attempt by Rasier to evade responsibility.

The Agreement states that Uber will provide management and supervisory services to Rasier, including the handling of regulatory compliance matters in Pennsylvania. However, Uber isn't licensed by the PUC, only Rasier is, and Rasier cannot be permitted to contract away its responsibility for regulatory compliance. More importantly, Uber's track record on compliance is abysmal, having repeatedly and contemptuously ignored Commission regulations and orders since it entered Pennsylvania.

Rasier will be able to avoid its duties by arguing that Uber simply didn't meet the terms of the Agreement and that it was Uber, not Rasier, who failed to meet the Commission's regulatory standards. Rasier creates a loophole with this Agreement, allowing it to completely shirk regulatory compliance. Uber must be regulated and licensed by the Commission if this Agreement is accepted or this arrangement will create a legal nightmare.

Not only does the Agreement permit Rasier to circumvent accountability, it also fails to explicitly outline how Uber will provide regulatory compliance. For example, the Agreement does not provide whether employees will be hired to implement Rasier's Compliance Plan and does not state whether Uber will check if drivers comply with Rasier's Compliance Plan or with the Commission's regulations. Nothing indicates that Uber will conduct background checks or vehicle safety checks or comply with any of the requirements contained in the Commission's December 5th Order. The Agreement does not contain any safeguards to ensure regulatory compliance.

Not to mention, Uber disclaims all responsibility for all of Rasier's activities in its terms of service. How can Rasier be overseen and managed by an entity who is not licensed and who disclaims all responsibility for the activities of Rasier and its drivers? Allowing such an arrangement would be a disservice to the public.

The Agreement is also legally deficient because Jon Feldman, General Manager of Uber Pennsylvania signed the Agreement on behalf of Rasier. Rasier is a limited liability company ("LLC"). By law, only the members or managers of an LLC can bind the company. Feldman is only employed by Uber and is not a member or manager of Rasier, thus he cannot bind Rasier to the Agreement. According to its CPC Application, Travis Kalanick is the sole member and manager of Rasier, therefore only he is permitted to bind the company. This is simply another attempt of Rasier and Uber to pull the wool over the eyes of the Commission and the public and avoid responsibility.

In connection with the Agreement, Rasier identifies Feldman as the sole Uber employee responsible for overseeing Rasier's regulatory compliance. Feldman is currently the General Manager of Uber Philadelphia and Feldman's office oversees and encourages the illegal operations of UberX in that city. Feldman's role with Uber demonstrates that he cannot be trusted to ensure regulatory compliance. Rasier's complete disregard for authority and for Pennsylvania law is embodied in its choice to have Feldman supervise its regulatory compliance.

Additionally, Feldman's office, and Rasier's sole office in the Commonwealth, is in Philadelphia, an area where Rasier is prohibited from operating. How can Rasier expect to oversee operations and compliance in all of Pennsylvania from a single office in the Commonwealth where it is not even permitted to operate? One office to oversee operations and compliance is inadequate.

The Agreement is deceptive and unlawful and should not be accepted by the Commission.

Waiver of Regulations

Rasier does not state how it will ensure that transportation services are not provided in areas where Rasier does not hold authority. The burden of such compliance should be on Rasier, not on its drivers.

If Rasier is not licensed to operate in certain counties in Pennsylvania, Uber's App should be programmed in such a way so that consumers cannot request rides in un-certificated areas. i.e. since Philadelphia or Beaver County is excluded from the Rasier's CPC, the App must be programmed so that customers cannot request rides from within Philadelphia or Beaver County. Rasier, not its drivers, should be tasked with operating within the confines of its CPC.

Additionally, Rasier should be required to program its App such that drivers who reside outside of the Commonwealth cannot pick up passengers in Pennsylvania. For example, many of the drivers that were fined by the Philadelphia Parking Authority for operating illegally resided outside of Pennsylvania. These drivers are not subject to Pennsylvania's vehicle and driver safety requirements and Rasier does not have the Commission's authority to use these drivers to provide transportation services in Pennsylvania. Accordingly, the Commission should require that the Uber App be programmed in such a way that out-of-state drivers cannot pick up passengers in Pennsylvania.

Rasier must be held accountable for ensuring that the activities of its drivers comply with the Commission's regulations.

Conclusion

Time and time again Uber and Rasier have proven themselves untrustworthy and unreliable. Their attempts to deceive the public and thwart the efforts of regulators should not be rewarded. Instead of taking responsibility for its actions, Rasier attempts to shift the burden of regulatory compliance onto its drivers and onto Uber, an entity not licensed by the Commission.

If the Commission grants Rasier authority pursuant to its current Compliance Plan, the Commission will expose the public to great potential harm.

Thank you for your time and attention.

Respectfully submitted,

Michael S. Henry

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cc: Vice Chairman John F. Coleman, Jr.
Commissioner Pamela A. Witmer
Commissioner James H. Cawley
Commissioner Gladys M. Brown
All Parties of Record