

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2424608

RASIER-PA, LLC

**PROTEST OF EXECUTIVE TRANSPORTATION COMPANY T/A
LUXURY SEDAN**

The above Protestant, by and through its attorney, Michael S. Henry, Esquire, hereby objects to the approval of the above application for the following reasons:

I. PARTIES

1. Applicant, Rasier-PA, LLC (“Rasier”), is Delaware limited liability company and a wholly owned subsidiary of Uber Technologies, Inc. (“Uber”), seeking authorization to operate a commercial on-demand ride-sharing network service using a mobile software application.

2. Rasier is a wholly owned subsidiary of Uber Technologies, Inc. (“Uber”), a privately held California-based transportation network company¹

¹ A transportation network company (“TNC”) is defined by the California Public Utilities Commission as “a company that uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles.” Decision Adopting Rules and Regulations to Protect

whose mobile-phone application facilitates on-demand ridesharing by enabling passengers who need transportation to demand immediate service from private non-professional drivers who charge a fee for their service.

3. Protestant, Executive Transportation Company, t/d/b/a Luxury Sedan Service, is a Pennsylvania corporation and a public utility that holds a certificate of public convenience issued by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) under docket number A-00109726, authorizing it “to transport, as a common carrier, persons, in limousine service, between points in Pennsylvania.” Protestant also has limousine rights issued by the Philadelphia Parking Authority. Protestant’s address is: 1167 Newport Mews Drive, Bensalem, Pennsylvania. Telephone number: (215) 333-3333.

II. THE APPLICATION

4. The Application states that the Applicant is seeking the right “to operate a ride-sharing network service for passenger trips between points in the Commonwealth of Pennsylvania, excluding points originating or terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union.

Public Safety While Allowing New Entrants to the Transportation Industry, California Public Utilities Commission, Rulemaking 12-12-11 (Filed December 20, 2012) (copy attached).

5. Applicant proposes to use a digital platform to connect passengers to private individuals who will provide transportation service in their own vehicles without authorization from either the Commission or the Philadelphia Parking Authority.

6. The proposed service by the Applicant is transportation brokering, while the proposed service by the private individuals who will actually be providing transportation is call or demand service or limousine service.

III. STANDING

7. In order to have standing to protest a motor carrier application, a protestant must have some operating authority in actual, or potential, conflict, with the authority sought by an applicant.

8. In the present case, Protestant has standing to protest the application, notwithstanding the Applicant's characterization of the proposed service as "experimental", because the proposed service will facilitate the provision of illegal call or demand service in Philadelphia by private individuals without certificates of public convenience and such service is in actual, or potential, conflict with Protestant's Authority-issued call or demand authority in Philadelphia.

9. At the very least, Protestant has standing to challenge the Applicant's claim that the proposed service is, in fact, motor carrier service, rather than a brokerage service, and to present evidence that the proposed service will facilitate the provision of transportation that is in actual, or potential, conflict with Protestant's service.

IV. OBJECTIONS TO THE APPLICATION

A. APPLICANT'S REQUEST FOR AUTHORIZATION TO PROVIDE EXPERIMENTAL SERVICE AS DESCRIBED IN THE APPLICATION SHOULD BE DENIED BECAUSE IT IS AGAINST THE PUBLIC INTEREST

10. Commission regulations require a certificate holder to own or lease any vehicle used to provide authorized service and to exercise direct control and supervision over the vehicle. 52 Pa. Code §29.101(a)(5) and (f)(2)(i).

11. Direct control and supervision by a certificate holder includes the duty to inspect the vehicle and equipment that will be used to provide the authorized service prior to taking possession of it and to certify that it is in a safe condition for operation on the highway. 52 Pa. Code §29.101(c).

12. Direct control and supervision by a certificate holder also includes the duty to ensure that the vehicles are operated by drivers qualified

under Subchapter F of Chapter 29 of the Commission's regulations. 52 Pa. Code §29.101(a)(2).

13. Direct control and supervision by a certificate holder also includes the duty to ensure that the vehicles are covered by insurance as provided by 52 Pa. Code §32.11 and registered as set forth in the Vehicle Code, 75 Pa. C.S. §§101-9910. 52 Pa. Code §29.101(a)(3).

14. Direct control and supervision by a certificate holder also includes the duty to furnish and maintain adequate service to the public which shall be reasonably continuous and without unreasonable interruptions and delays. 52 Pa. Code §29.101(f)(2)(iii).

15. Direct control and supervision by the certificate holder also includes the duty to enter into a proper lease agreement with the driver of any vehicle that will be used to provide authorized service. 52 Pa. Code §29.101(a)(5) and (f).

16. Certificate holders are prohibited from leasing, contracting with, or making an arrangement with an employee-driver under which the certificate holder is given custody or possession or use of a vehicle owned or leased by the employee-driver or his nominee. 52 Pa. Code §29.101(f)(1).

17. The application proposes that private vehicle owners will provide the authorized transportation service by driving their own vehicles,

but does not propose that there will be any lease agreement between the Applicant and the vehicle operators.

18. Under the proposed service, possession of the vehicle will never pass from the owner-driver to the Applicant.

19. Presumably, under the proposed service, the vehicle owners are under no obligation to use Applicant's mobile application to provide authorized service and are free to use their own vehicles wherever and whenever they want for their own purposes.

20. The proposed service is not in the public interest for several reasons.

21. First, the proposed service is not in the public interest because the Applicant will not be able to exercise direct control and supervision over the vehicles in violation of 52 Pa. Code §29.101(a)(5) and (f)(2)(i).

22. Under the proposed service, the Applicant will never take possession and control of the vehicle when the owner-driver engages the Applicant's mobile telephone application.

23. Accordingly, it is not possible for the Applicant to conduct safety inspections in compliance with 52 Pa. Code §29.101(c), because it never takes possession of the vehicle.

24. Notwithstanding the fact that possession of the vehicle that will be used in service will never pass to the Applicant, the proposed service is not in the public interest because it violates Commission regulations that prohibit a certificate holder from entering into an arrangement with an employee-driver or his nominee the use of the employee-driver's vehicle in service in violation of 52 Pa. Code §29.101(f)(1).

25. The proposed service is not in the public interest because the Applicant cannot ensure that it will provide continuous service without unreasonable interruption or delay.

26. Applicant will not control or supervise the operation of the vehicles that will be providing the transportation service and the owner-drivers are under no obligation to provide any service at all, all of which violates 52 Pa. Code §29.101(f)(2)(iii).

27. Furthermore, the proposed service is not in the public interest with respect to insurance and registration of the vehicles.

28. Presumably, the title, registration and possession of each vehicle will provide the proposed service will remain with the owner-driver.

29. Registration of a vehicle as a private passenger vehicle by the owner-driver violates 52 Pa. Code §29.101(a)(3) and the Vehicle Code because the vehicle is being used as a commercial vehicle for hire.

30. Furthermore, it will not be possible for the Applicant to obtain insurance coverage on a vehicle that is titled, registered and operated by another person who never relinquishes possession of the vehicle as the Applicant will have no insurable interest in the vehicle.

31. In addition, it is also not possible to obtain coverage on a private passenger vehicle that is being used for commercial purposes, since most policies contain a livery exception, all in violation of 52 Pa. Code §29.101(a)(3).

B. APPLICANT’S REQUEST FOR AUTHORIZATION TO PROVIDE SERVICE AS A MOTOR CARRIER SHOULD BE DENIED BECAUSE IT PROPOSES TO OPERATE SOLELY AS A BROKER AND NOT AS A MOTOR CARRIER AND PROPOSES TO BROKER TRANSPORTATION SERVICES FROM UNCERTIFIED CARRIERS

32. The Applicant seeks authorization to operate as a “motor carrier,” yet, based on the description of the proposed service in the Application, the Applicant is, in reality, seeking to operate as a “broker.”

33. In fact, the Commission has granted authorization to a company that is affiliated with the Applicant to operate as a “broker” and the service authorized by the Commission in that case is indistinguishable from the proposed service in the present case. See *Application of Gegen, LLC*, Docket No. A-2012-2317300.

34. The Public Utility Code defines the term “common carrier” as follows:

Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, **but shall not include** contract carriers by motor vehicles, or **brokers**, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

66 Pa. C.S. §102 (emphasis added).

35. The Public Utility Code defines the term “motor carrier” as “[a] common carrier by motor vehicle, and a contract carrier by motor vehicle.”

66 Pa. C.S. §102.

36. The Public Utility Code defines the term “broker” as follows:

Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. §2501

37. In its application, the Applicant indicates that it will use its mobile software application to facilitate ridesharing arrangements between prospective passengers and private individuals using their own vehicles, who will provide the actual transportation service without first acquiring their own certificates of public convenience; the Applicant does not propose to provide transportation service itself.

38. Based on the foregoing, Applicant proposes to function as a “broker” within the meaning of 66 Pa. C.S. §2502 and not as a “motor carrier” within the meaning of 66 Pa. C.S. §102.

39. Furthermore, the proposed service violates Commission regulations, which prohibit a broker to “employ or engage a carrier who or which is unable to lawfully provide the transportation under his contracts, agreements, or arrangements therefor.” 52 Pa. Code §39.5 (pertaining to carrier’s operating authority).

40. In other words, a broker cannot procure transportation services from a motor carrier that does not have a certificate of public convenience authorizing the type of transportation that is being requested.

41. Accordingly, the application should be denied because the Commission may not authorize a person or corporation to provide motor carrier service where the person or corporation only proposes to procure

such service on behalf of third parties, but does not propose to provide such service itself, either directly or indirectly and where the third party service providers are not certified.

C. THE APPLICATION SHOULD BE DENIED BECAUSE THE PROPOSED SERVICE DOES NOT DIFFER, IN ANY MEANINGFUL WAY, FROM OTHER MOTOR CARRIER SERVICES AND THEREFORE DOES NOT QUALIFY AS “EXPERIMENTAL SERVICE” WITHIN THE COMMISSION’S SCHEME OF CLASSIFICATION FOR SERVICE PROVIDED BY COMMON CARRIERS OF PASSENGERS

42. Commission has adopted a scheme of classification for service provided by common carriers of passengers, including “experimental service”, under 52 Pa. Code §29.13, which states:

The following standard classification of types of service furnished by common carriers of passengers is adopted, and the following is hereby recognized as a standard class of common carrier service. The rights and conditions pertaining to a standard class of service are specified in Subchapter D (relating to supplemental regulations). A certificated service which does not completely correspond to a standard class may be governed, where practicable, by the regulations for the standard class to which it most nearly corresponds:

- (1) *Scheduled route service.* Common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, wherein the vehicles delivering the service operate according to schedules along designated routes.
- (2) *Call or demand service.* Local common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the

service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.

- (3) *Group and party service.* Common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a nonexclusive basis for tour or sightseeing service and special excursion service.
- (4) *Limousine service.* Local, nonscheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance.
- (5) *Airport transfer service.* Common carrier service for passengers rendered on a nonexclusive basis which originates or terminates at an airport.
- (6) *Other services: paratransit, experimental.* Common carrier service for passengers which differs from service as described in any one of the five classes set forth in paragraphs (1)—(5) and is provided in a manner described in the certificate of public convenience of the carrier and is subject to restrictions and regulations are stated in the certificate of the carrier or in this chapter.

43. 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. 52 Pa. Code §29.352.

44. First of all, the proposed service is not “new, innovative or experimental type or class of common carrier service” within the meaning of 52 Pa. Code §29.352.

45. The provision of transportation service by private individuals in their own vehicles without first acquiring a certificate of public convenience is not a “new, innovative, or experimental service,” it is an old concept commonly known as “gypsy cab” service.

46. Much of the regulation of taxicab service throughout this Commonwealth is designed to prevent unregulated “gypsy cabs” from providing service.

47. Furthermore, the use of a mobile telephone application to facilitate the provision of “gypsy cab” service is not “new, innovative, or experimental”; it is illegal.

48. Secondly, the use of mobile telephone applications is also not a “new, innovative or experimental,” nor does it distinguish the proposed service from existing limousine service or call or demand service.

49. Prior to the filing of the present application, the Philadelphia Parking Authority approved the use of mobile telephone applications to facilitate limousine service in Philadelphia by a company affiliated with the applicant. See *Application of Gegen, LLC*, PPA Docket No. 1029368-07, See also,

50. In addition, medallion taxicabs in Philadelphia use a mobile telephone application called “215-Get-a-Cab” in connection with their call or demand service in Philadelphia.

51. Thus, the proposed use of a mobile telephone application does not distinguish the proposed service from either limousine service or call or demand service.

52. The proposed service is not “experimental” within the meaning of 52 Pa. Code §29.13 because it does not differ, in any significant way, from “call or demand service” or “limousine service”, as defined thereunder.

53. As noted above, “experimental service” is defined negatively, as a service that *differs* from “scheduled route service”, “call or demand service”, “group and party service”, “limousine service” and “airport transfer service.”

54. But nothing in the application distinguishes the proposed service, in any meaningful way, from the other motor carriers services defined under the Commission’s scheme of classification for such services.

55. In the present case, the Applicant’s description of how the digital platform functions makes it indistinguishable in any meaningful way from limousine service, which operates on an advance reservation basis, or call or demand service, which allows a vehicle to be “hailed” from the street.

56. And, as noted, the use of digital platform functions in limousine service and call or demand service is already being used by some carriers.

57. Based on the foregoing, the application should be denied because the proposed service does not differ, in any meaningful way, from other motor carrier services and, therefore, does not fall within the definition of “experimental service” under 52 Pa. Code §29.13.

**D. THE APPLICATION SHOULD BE DENIED
BECAUSE IT PROPOSES TO FACILITATE
COMMERCIAL TRANSPORTATION SERVICES
UNDER TO RIDESHARING ARRANGEMENTS
WITHOUT CERTIFICATED SERVICE
PROVIDERS**

58. The Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9, defines the term “ridesharing arrangement” as follows:

As used in this act, "RIDESHARING ARRANGEMENT" shall mean any one of the following forms of transportation:

- (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver *who is not engaged in transportation as a business*. The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
- (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
- (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a

public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

59. Individuals or entities that provide transportation services under a ridesharing arrangement are not subject to motor carrier laws and are not considered commercial vehicles. 66 P.S. §695.2 and §695.99.

60. But a transportation provider that receives compensation for its services is no longer doing so pursuant to a “ridesharing arrangement” and must first obtain a certificate of public convenience prior to beginning service. 66 Pa. C.S.. §1101 and 53 Pa. C.S. §§ 5714 and 5741.

61. Accordingly, the application should be denied because it is illegal to facilitate commercial transportation services pursuant to ridesharing arrangements that will be provided by individuals or entities that do not possess certificates of public convenience.

D. GENERAL OBJECTIONS

62. In addition to the foregoing, Protestant objects to approval of the application because the Applicant cannot sustain its burden of proof pursuant to 52 Pa. Code §41.14 as to need and fitness.

63. Protestant also avers that approval of the application will endanger or impair Protestant’s operations to the extent that, on balance, the granting of the application would be contrary to the public interest.

64. Protests to this Application are due on or before June 30, 2014; therefore, this protest is timely and Protestant is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

65. Pursuant to 333(c) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §333(c), demand is made upon Applicant to furnish Protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the Protestant.

66. Additionally, demand is made upon Application to furnish Protestant's counsel with proof of need for service and financial responsibility.

67. Protestant is not aware of any agreement that will cause it to withdraw its protest.

WHEREFORE, Protestant, respectfully requests this Honorable Commission to deny the Application.

Respectfully submitted,
Michael S. Henry
Michael S. Henry
Attorney for Protestant
2336 S. Broad Street

Philadelphia, PA 19145
(215) 218-9800
mshenry@mshenrylaw.com

June 30, 2014

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I served a copy of the foregoing Protest on the following in accordance with the regulations of the Commission or in a manner agreed upon by the recipient in advance:

Karen O. Moury, Esquire
Buchanan, Ingersoll, & Rooney, PC
409 N. 2nd Street, Suite 500
Harrisburg, PA 17101-1357

Michael S. Henry

Michael S. Henry
Attorney for Protestant
2336 South Broad Street
Philadelphia, PA 19145
215-218-9800
mshenry@ix.netcom.com

Date: June 30, 2014

VERIFICATION

MICHAEL S. HENRY, ESQUIRE verifies that he is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Michael S. Henry
Michael S. Henry

Dated: June 30, 2014

Certificate No. A-00109726

Limousine – Pa. P.U.C. No. 8
Cancels
Limousine – Pa. P.U.C. No. 7

Executive Transportation Company
T/D/B/A
Luxury Sedan Service
Rates and Rules
Governing the Transportation
Of persons.

(As Designated herein)

'12

Issued: September 26, 2011

Effective: September 27, 2011

Issued by: Joseph McQuillan, Pres.
Executive Transportation Company
1167 Newport Mews Dr.
Bensalem PA 19020
(215) 331-4660

LIST OF CHANGES MADE BY THIS TARIFF

Rules and Regulations

Item 4 - Waiting time (For Class “D” Rates)- Increased the time charges from \$23.76 an hour to \$25.80 per hour. Also changed the incremental charge from \$0.33 every 50 seconds to \$0.43 every 60 seconds.

Schedule of Rates, Item 10 – Class “B” Rate – 1) Lowered hourly charge from \$40.00 per hour to \$30.00 per hour. 5) Changed incremental charge from \$20.00 per ½ hour to \$15.00 per ½ hour.

Item 20 – Mileage Rates – Lowered the initial charge from \$7.00 for the first 1 4/7 miles, to \$7.00 for the first 1 3/6 miles or fraction thereof. Additionally, we raised the per mile charge from \$0.33 for every 1/7 of a mile or fraction thereof (which equated to \$2.31 per mile), to \$0.43 for every 1/6 of a mile or fraction thereof (which now equates to \$2.58 per mile).

Operating Authority

To Transport, as common carrier persons, in limousine service, between points in Pennsylvania.

* Executive is permitted to continue to use its mileage based-tariff as well as utilize onboard meters. However, the waiver is restricted to those areas Executive currently serves under its PUC Authority, i.e., Philadelphia, bucks, Montgomery, Delaware, and Chester Counties. (All of Executive’s service within, to, and from Philadelphia is currently regulated by the PPA. However, to the extent that Executive may, in the future, provide service to/from Philadelphia that would not be subject to the PPA’s jurisdiction, the PUC will grant the waiver to cover this contingency.) This restriction allows Executive to continue service in its current effective service area under its existing tariff. However, if Executive expands its luxury Sedan Service beyond its current effective service area, providing point to point service outside bucks, Montgomery, Delaware, and Chester Counties, it will be required to utilize a time based tariff. (The waiver also attaches to luxury Sedan Service provided to/from Philadelphia, bucks, Montgomery, Delaware, and Chester Counties to/from points outside those counties.)

* Per waiver contained in Commission Order at No. P-00062231, entered September 18, 2006.

Rules and Regulations

Item 1: Advance Reservations- must be made with the carrier prior to service being rendered.

Item 2: Hourly Rates (For Class “A” Rates)- will apply from the time the vehicle leaves carriers place of business, until the vehicle returns to carriers place of business.

Item 3: Mileage Rates- will be assessed from the point of pickup to dropoff.

(C) Item 4: Waiting time (For Class “D” Rates)- unless otherwise provided, all waiting time will be charged at \$0.43 per for every 60 seconds² or fraction thereof (which equates to \$25.80 per hour), and only applies to Luxury Sedan Services.

Item 5: Mileage- as used herein will be computed with mileage and or fee to be calculated by the odometer or a device¹ connected to the odometer.

Item 6: Charges not covered by rates- rates do not include bridge, and highway tolls, or parking fees.

Item 7: Gratuity A gratuity charge of 20% will be added to the hourly rate tariff charges.

Item 8: Hourly Rates (for Class “B” Rates) – will apply from the time of pick up to drop off unless the amount of time traveled from pick up to drop off is greater than 20 minutes, not including waiting time during stops made. When time traveled between pick up to drop off is greater than 20 minutes, the charge will include an amount equal to the time necessary to return to the pick up point.

(C) – Indicates change or addition

Schedule of rates

¹ Device being defined as a group of electronic computerized instrument(s), and or two-way radio component(s) that work in conjunction with a centralized automated Global Positioning Sensor Dispatch system. These instrument(s), and or component(s) are individually approved and or certified by multiple Federal Departments; which include but not limited to the Federal Communications Commission (FCC), and the Federal Weights and Measures. These individual component(s) that are interfaced together operate as the Device.

² Waiting Time and mileage charges are interchangeable charges during the initial seven dollar minimum.

