

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2424608

RASIER-PA, LLC

PROTEST OF NOBLE CAB , INC.

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 Public Safety While Allowing New Entrants to the Transportation Industry,

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, Noble Cab, Inc., is a Pennsylvania corporation and a public utility that holds Certificate of Public Convenience No. 1026790-01, issued by the Philadelphia Parking Authority (“PPA” or “Authority”), granting the following authority²:

To transport, upon call or demand, persons and their baggage; and parcels, packages, and property, at the same basic PPA TLD approved metered rates; between points in the city and county of Philadelphia to points in Pennsylvania; and from points in Pennsylvania to points in the city and county of Philadelphia, if the request for services for such transportation is received by call to its PPA Certified Dispatch Association, limited to one (1) vehicle per medallion.

Protestant’s address and business telephone are as follows:

2024 Fairmount Avenue
Philadelphia, Pennsylvania 19130
(215) 416-5235

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

California Public Utilities Commission, Rulemaking 12-12-11 (Filed December 20, 2012) (copy attached).

² The operating rights of medallion taxicabs are defined by statute under 53 Pa. C.S. §5714(c).

the Commonwealth of Pennsylvania, excluding points originating or terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union.

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



Philadelphia
Parking
Authority

Taxicab and Limousine Division
2415 S. Swanson Street
Philadelphia, PA 19148-4113
215-683-9400
215-683-9785



May 26, 2011

Mr. Anis Nasr, President
Noble Cab, Inc.
2024 Fairmount Avenue
Philadelphia, PA 19130

**RE: AUTHORIZATION TO PURCHASE MEDALLION AND CONDITIONAL
CERTIFICATE OF PUBLIC CONVENIENCE APPROVAL**

Held by: Tony Sue Cab Co.
Buyer: Noble Cab, Inc.

CPC No 1000757-01
CPC No 1026790-01

Medallion: P- 0392

Dear Mr. Nasr:

Your application in this proceeding has been reviewed and is in order. The sale of the Medallion and issuance of the Certificate of Public Convenience to operate Taxicab Medallion P-0392 in the City of Philadelphia is consistent with the public's interest:
Therefore,

You are advised: That the sale of Medallion No. 0392 is hereby authorized. That upon compliance with the terms and conditions of this letter, a Certificate of Public Convenience will be issued granting the following right(s):

Philadelphia Medallion Taxicab rights to transport, upon call or demand, persons and their baggage; and parcels, packages and property, at the same basic PPA TLD approved metered rates; between points in the city and county of Philadelphia and from points in the city and county of Philadelphia to points in Pennsylvania; and from points in Pennsylvania to points in the city and county of Philadelphia, if the request for services for such transportation is received by call to it's PPA Certified Dispatch Association, limited to one (1) vehicle per medallion.

Please be advised that your Certificate approval is conditional, you must comply within 30 days with the following requirements, *settlement may not be scheduled without satisfaction of the required items listed below:*

1. **File with the Authority, acceptable evidence of bodily injury, property damage and liability insurance. The only acceptable proof of insurance is a Form E provided by a registered insurance carrier.**
2. **Make an appointment with the Authority to inspect the vehicle to be operated. The vehicle shall comply with the Authority's Rules and Regulations for vehicles markings, age, type, mileage, and taxi appropriate equipment, to ensure vehicle compliance see Chapter 13 of the Regulations.**
3. **The purchase and sale of medallion is to be approved and finalized in front of PPA authorized staff at our headquarters by the deadline set forth under the conditions of the approval.**
4. **At the time of settlement the seller must surrender the medallion to PPA, the medallion will be reissued to the buyer upon the new vehicle inspection.**

Liens- None

YOU ARE FURTHER ADVISED: That failure to adhere to the above listed conditions on or before the expiration of the 30 days from the date of this letter will result in the dismissal of the application for a Certificate of Public Convenience without further Authority proceedings.

IN ADDITION, upon successful completion of said requirements, within 30 days of Settlement Closing Date of said medallion you must:

1. **Vehicle must be brought in for a new vehicle inspection to register the car and affix the medallion, unless voluntary suspension is requested in writing.**

2. Ensure approved vehicle(s) shall be equipped and linked to a PPA Certified Dispatch Association.
3. Medallion must be fully operational no later then 30 days after the settlement date.
4. Agreement of sale should be re-submitted. Handwritten changes should not be made and if they must, each change must be initialed by each party.

Please be advised, that upon compliance of all said requirements, P-0392 will be added to the Certificate of Public Convenience held by Noble Cab, Inc., CPC No 1026790-01 and Medallion P-0392 will be placed on the applicant's vehicle.

Sincerely,



Charles Milstein, Esq.
Assistant to Director
Taxicab & Limousine Division

cc: Inna Friedman, Broker