

Karen O. Moury
717 237 4820
karen.moury@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

July 18, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Application of Raiser-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, Pennsylvania
Docket No. A-2014-2416127

Dear Secretary Chiavetta:

On behalf of Raiser-PA LLC, I have enclosed for electronic filing the Brief of Raiser-PA LLC in Support of Petition for Interlocutory Review and Answer to Material Question in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,



Karen O. Moury

KOM/tlg
Enclosure
cc: Office of Special Assistants (via e-mail only)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing : Docket No. A-2014-2416127
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
Allegheny County, Pennsylvania :

**BRIEF OF RASIER-PA LLC IN SUPPORT OF
PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO MATERIAL QUESTION**

BUCHANAN INGERSOLL & ROONEY, P.C.

Karen O. Moury, PA ID No. 36879

409 North Second Street, Suite 500

Harrisburg, PA 17101-1503

Telephone: (717) 237-4820

Facsimile: (717) 233-0852

karen.moury@bipc.com

Attorneys for Rasier-PA LLC

Dated: July 18, 2014

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF ARGUMENT.....	3
III.	BACKGROUND AND PROCEDURAL HISTORY	5
IV.	ARGUMENT.....	6
V.	CONCLUSION	12

TABLE OF AUTHORITIES

Cases

Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994 (became final by operation of law by Order entered on December 23, 1994)..... 8

Application of Glen Alsace Water Company, 45 PA P.U.C. 472 (1971)..... 8

Application of Interstate Express, Inc., A-00111077 (entered April 1, 1994)..... 9

Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking, A-00107696, F.2 (entered February 21, 1989)..... 9

Application of Team Brokerage, Inc., A-00105267 (entered March 6, 1985)..... 9

Capitol Bus Company, 53 PA P.U.C. 590 (1979)..... 9

Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A-212285F0046/47 and A-210870F01 (July 9, 1998)..... 6

Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992) 6

Manufacturers’ Association of Erie v. City of Erie - Bureau of Water, 50 Pa. PUC 43 (1976)..... 6

Pa. Pub. Util. Comm’n v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552 (1990)..... 6

Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991)..... 6

Waddington v. Pa. Pub. Util. Comm’n, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996)..... 6

William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) 6

Statutes

52 Pa. Code § 29.352 5, 7

52 Pa. Code § 3.381(c)(iii)(A) 1

I. INTRODUCTION

Rasier-PA LLC (“Rasier-PA”) files this Brief in support of the Petition for Interlocutory Review, which presented the following material question for Commission review:

Given the Commission’s findings that a ridesharing network service provider is distinguishable from a limousine or taxicab carrier, warranting issuance of a new class of authority as an experimental services provider, and its long line of cases holding that taxicab companies do not have standing to protest limousine applications (and vice versa), does a limousine provider or taxicab company have standing to protest an application for experimental ridesharing network services authority?

The proposed answer to the material question is no. The Commission should grant interlocutory review and find that Concord Limousine, Inc. (“Concord”) and Executive Transportation, Inc., t/a Luxury Sedan (“Luxury Sedan”) do not have standing to protest Rasier-PA’s application for experimental service authority. By taking this action, the Commission would significantly expedite the conduct of the proceeding, greatly conserve the parties’ valuable resources and enhance judicial economy by adjudicating Rasier-PA’s application without a hearing as an unprotested application under Section 3.381(c)(iii)(A) of the Commission’s regulations, 52 Pa. Code § 3.381(c)(iii)(A).¹

In its experimental service application, Rasier-PA has proposed to use a digital platform to connect passengers to independent ride-sharing operators who have been screened through a process that exceeds requirements imposed by the Commission in vehicles that meet all Pennsylvania-required standards. By allowing riders to request transportation through the

¹ Commission disposition of this issue also has the potential to expedite other similar proceedings, such as Rasier-PA’s statewide application (excluding designated counties), which is pending at Docket No. A-2014-2424608. Preliminary objections to the protests filed to that application are due on July 21, 2014. A prehearing conference is scheduled on both Rasier applications for July 24, 2014, with hearings expected to be held in August 2014.

Internet or a mobile application (“App”) on their smartphones, Rasier-PA would be offering a new and innovative product for the benefit of the traveling public.

In *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order adopted on May 22, 2014 (“*Yellow Cab Order*”), the Commission described a similar service as being sufficiently different to be distinguishable from existing limousine and call or demand services so as to qualify for a separate classification of common carrier authority known as “experimental service.” Distinguishing the proposed experimental service from existing services, the Commission pointed to the use of an App-based technology to arrange service as allowing for a wider ranging, faster and more user friendly scheduling of transportation services.

Because Concord and Luxury Sedan do not have authority that is in actual or potential conflict with Rasier-PA’s proposed experimental ride-sharing network services, they lack the requisite standing to protest Rasier-PA’s application and should not be permitted to further delay this proceeding. It is beyond dispute that ridesharing network services fill significant gaps in the transportation infrastructure in Allegheny County.² In short, as rider after rider will attest, Allegheny County needs Rasier-PA’s proposed service. Below are just two examples of riders touting this service, which is fulfilling a need that is not being met by existing carriers, including the statewide limousine providers who are seeking to delay Rasier-PA’s application proceeding.

Sally G., Pittsburgh - 15201

I have used Uber at least twice a week since it started in Pittsburgh. In February and March Uber drove me to and from the hospital safely so I could spend time with a close relative before they passed away. I would not have been able to take

² See *Application for Emergency Temporary Authority of Rasier-PA LLC*, Docket No. A-2014-2429993.

a bus or reliable cab in Pittsburgh to see my relative at the hospital. I cannot thank Uber enough for their wonderful service.

Michael P., Pittsburgh – 15213

I use the service every day to get to work and on weekends to get to parts of town that are otherwise a nightmare. Pittsburgh's cab infrastructure is a joke and the buses run on some arbitrary non-schedule, and the t lines are very limited and are completely, unsafely packed during peak times. Uber and lyft were godsend to this city.

Not only day to day but absolutely I've called upon Uber to help my friends and myself out of otherwise potentially dangerous situations, late at night and very early morning. Uber provides a valuable and much needed service to the people of this city. I really hope this can be resolved and the service can continue, as much for the folks that need it as well as for the jobs and much needed income it has provided for the drivers.

In their efforts to deny the traveling public access to the technology-enabled ride-sharing alternatives proposed by Rasier-PA, Concord and Luxury Sedan are relying on an antiquated and anti-competitive process that considers adverse effects of new entrants into the marketplace on the interests of existing businesses. The critical factors guiding the Commission here should be the adverse effects on the traveling public in Allegheny County if Rasier-PA's application is further delayed so that these protests can be considered, as well as the positive effects of competition, customer choice and economic growth resulting from approval of the application. The traveling public in Allegheny County needs immediate access to transportation alternatives that will meet their needs in an affordable, reliable and safe manner.

II. SUMMARY OF ARGUMENT

The protests filed by Concord and Luxury Sedan should be dismissed on the basis that they lack the requisite standing to participate in Rasier-PA's application proceeding seeking authority to provide experimental ride-sharing network services. Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous and costly litigation.

The Commission's regulations establish experimental service as a classification of common carrier authority that is separate and apart from limousine and call or demand services. Moreover, in the *Yellow Cab Order*, the Commission found that a similar service was sufficiently different from existing limousine and call or demand services so as to qualify for this separate classification of common carrier authority. Distinguishing the proposed experimental service from existing services, the Commission pointed to the use of an App-based technology to arrange service as allowing for a wider ranging, faster and more user friendly scheduling of transportation services.

In prior cases addressing a party's standing to protest an application for motor carrier authority, the Commission has repeatedly found that a party must have some operating authority in actual or potential conflict with the authority sought by the applicant to have the requisite standing to protest the application. In a long line of cases, the Commission has consistently concluded that having one classification of common carrier service does not give a carrier standing to protest a different classification of common carrier service.

Under this well-established Commission precedent, the limousine providers that have protested Rasier-PA's application for approval to offer experimental ride-sharing services do not have authority that is in actual or potential conflict and therefore lack the requisite standing to challenge this application. When a carrier does not hold authority that is in conflict or potential conflict with the authority sought by the applicant, it cannot be adversely affected by the granting of the application and therefore is not "aggrieved." Rather, the carrier possesses no greater interest in the application than any other member of the general public. This generalized interest is not sufficient to confer standing on a carrier.

As neither Concord nor Luxury Sedan has authority to operate experimental ride-sharing network services in Pennsylvania, their protests should be dismissed, and Rasier-PA's application should be expeditiously approved without hearing.

III. BACKGROUND AND PROCEDURAL HISTORY

On April 14, 2014, Rasier-PA filed an application, pursuant to Section 29.352 of the Commission's regulations, 52 Pa. Code § 29.352, requesting the issuance of a certificate of public convenience evidencing approval to operate an experimental ride-sharing network service between points in the Allegheny County, Pennsylvania. Notice of Rasier-PA's application was published in the *Pennsylvania Bulletin* on April 26, 2014, with protests due by May 12, 2014. Concord and Luxury Sedan filed timely protests.³

Rasier-PA filed preliminary objections ("POs") on June 2, 2014 seeking dismissal of the Concord and Luxury Sedan protests on the grounds, *inter alia*, that the limousine providers lack the requisite standing to participate in the proceeding because they do not hold operating authority that is in actual or potential conflict with the proposed service. By Interim Orders issued on July 1, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson denied Rasier-PA's POs, concluding that service proposed by Rasier-PA's application to provide experimental ride-sharing network services within Allegheny County presented a potential conflict with statewide limousine authority held by Concord and Luxury Sedan.

³ Timely protests were also filed by the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Justice and JB Taxi LLC, which were dismissed for lack of standing by Initial Decisions dated July 1, 2014. Those decisions are still subject to the filing of exceptions and/or review by the Commission. Also, Rasier-PA recognizes the need to file adequate evidence of insurance coverage before a certificate of public convenience is issued.

On July 11, 2014, Rasier-PA filed a Petition for Interlocutory Review and Answer to a Material Question. By Secretarial Letter dated July 15, 2014, the Commission shortened the time for filing briefs and required them to be submitted by July 18, 2014.

IV. ARGUMENT

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

Concord and Luxury Sedan hold statewide limousine authority. By contrast, Rasier-PA has proposed an experimental ride-sharing network service that is clearly distinguishable from existing limousine and call or demand service transportation options. As limousine providers, Concord and Luxury Sedan do not have a direct, immediate and substantial interest in this

application proceeding, and therefore do not have the requisite standing to challenge Rasier-PA's application.

The Commission's regulations establish "experimental service" as a classification of passenger carrier service that is separate and apart from limousine service, call or demand service, group and party service, airport transfer service, paratransit service, and scheduled route service, and describe it as follows:

In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment of 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 (emphasis added).

Rasier-PA's application proposes experimental service that would use a digital platform to connect passengers to independent ride-sharing operators, which does not conflict with the authority held by the Protestants. Under Rasier-PA's proposal, riders would request transportation through the Internet or a mobile application ("App") on their smartphones and be connected with independent ride-sharing operators for safe, reliable and affordable transportation.

In the *Yellow Cab Order*, the Commission described a similar service as being sufficiently different to be distinguishable from existing limousine and call or demand services so as to qualify for this separate classification of common carrier authority known as experimental service. Distinguishing the proposed experimental service from existing services, the Commission pointed to the use of an App-based technology to arrange service as allowing for a wider ranging, faster and more user friendly scheduling of transportation services.

In a Joint Statement accompanying the *Yellow Cab Order*, Commissioner Witmer and Commissioner Brown referred to the application as proposing a "new and innovative type of

transportation service that uses modern technology to serve the traveling customer in Pennsylvania.” Joint Statement at 1. Commissioner Witmer and Commissioner Brown explained that the service did “not fit squarely within the types of transportation service delineated in our regulations” and described the experimental service section of the regulations as being “designed to accommodate a proposed transportation methodology not already encompassed by our regulations.” *Id.* Further, the Joint Statement described the use of an App-based technology to connect passengers with drivers as having the “potential to revolutionize the transportation market and provide customers with more options for travel throughout Pennsylvania.” *Id.*

In prior cases addressing a party’s standing to protest an application for motor carrier authority, the Commission has repeatedly found that a party must have some operating authority in actual or potential conflict with the authority sought by the applicant to have the requisite standing to protest the application. In a long line of cases, the Commission has consistently concluded that having one classification of common carrier service does not give a carrier standing to protest a different classification of common carrier service.

In *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994 (became final by operation of law by Order entered on December 23, 1994), the Commission found that a protestant having call or demand authority lacked standing to protest an application for amendment of a certificate of public convenience seeking additional service area in which to render limousine service. The ALJ’s ID contained the following discussion:

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. *See, Application of Glen Alsace Water Company*, 45 PA P.U.C. 472 (1971), standing denied to

uncertificated protestant; *Re Francis M. Bauer*, 50 PA P.U.C. 825 (1977), late-filed protest allowed where protestant had an application for conflicting authority pending; *Re Capitol Bus Company*, 53 PA P.U.C. 590 (1979), call or demand authority conferred no standing to protest scheduled route service application; *Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking*, A-00107696, F.2 (entered February 21, 1989), operations under temporary authority with permanent authority application pending sufficient to confer standing upon a protestant; *Application of Team Brokerage, Inc.*, A-00105267 (entered March 6, 1985) and *Application of Interstate Express, Inc.*, A-00111077 (entered April 1, 1994), certificated common carriers lack standing to protest applications for brokerage authority; and *Application of Commercial Aggregates Transportation and Sales, L.P.*, A-0011085, F0003 (entered June 22, 1994), certificated common carrier lacked standing to continue to prosecute the protest after restrictive amendment eliminated all areas of operating authority between the protestant and the applicant.

I.D. 7-8. *See also Application of Kutztown Area Transport*, Docket No. A-2009-2140250 (Order entered October 18, 2010); *Application of K&F Medical Transport*, Docket No. A-2008-2020353 (Order entered July 8, 2008).

When a carrier does not hold authority that is in conflict or potential conflict with the authority sought by the applicant, it cannot be adversely affected by the granting of the application and therefore is not “aggrieved.” Rather, the carrier possesses no greater interest in the application than any other member of the general public. This generalized interest is not sufficient to confer standing on a carrier. *Application of Danach, LLC*, Docket No. A-2013-2391804 (Order entered June 19, 2014) (“*Danach*”).

In *Danach*, the protestant was a call or demand carrier protesting a limousine application. In exceptions to the initial decision, the protestant averred that the applicant planned to use a smartphone application to enable individuals to make an immediate demand for transportation services and likened the proposed service to its own existing call or demand service. Upholding the initial decision of the administrative law judge, the Commission found that the protestant lacked standing to continue as a party because its authority and the type of authority sought by the applicant are not in conflict. *Danach* Order at 7.

Under the *Yellow Cab Order* that distinguished similar experimental services from limousine and call or demand services and the well-established Commission precedent of prohibiting one type of carrier from protesting the applications of other types of carriers, Concord and Luxury Sedan do not have standing to protest Rasier-PA's application. Denying Rasier-PA's POs, the Interim Orders found that "[t]o adopt the narrow view of standing espoused by the Applicant would be so limiting that virtually no carriers would be in a position to protest." Interim Orders at p. 5 (July 1, 2014).

Nothing in the Commission's regulations suggests that every application should be capable of being protested by existing carriers. To the contrary, by the very nature of experimental service, which is designed to offer new or innovative options to the riding public, the authority of existing carriers would typically not be in actual or potential conflict with experimental service. In this case, the App-based technology that would be used by Rasier-PA to allow riders to connect with available operators has been found by the Commission to qualify as a separate classification of common carrier authority known as experimental service. *See Yellow Cab Order, supra.*

Having no carriers in a position to protest is not a problem. Rather, it means that a new and innovative product has been developed that is currently not being offered by existing carriers and that will benefit the riding public. In this case, it means that a technology-enabled reliable and affordable alternative to traditional transportation can be made immediately available to residents of and visitors to Allegheny County to fill significant gaps in the existing transportation infrastructure.

It is inappropriate to manufacture a basis upon which existing providers of other types of services can seek to preclude the introduction of services that may adversely affect their businesses. Granting standing to a carrier simply to ensure that some person or entity can protest

an application is not consistent with well-established Commission precedent. It is also allowing an outdated and anti-competitive regulatory scheme to preclude the offering of a new and innovative service to the public that it needs and wants. It is incumbent upon the Commission to ensure that the existing regulatory structure is not a barrier to desirable changes in the transportation industry. *Yellow Cab Order, supra*, at 6.

In the household goods moving industry, the Commission recently recognized the value of deferring to the market place as to whether new services are needed. Eliminating the outdated and lengthy application process that considers the effect of competition on existing carriers, the Commission touted the benefits of increased competition, customer choice and job creation. *Final Rulemaking Amending Regulations Applicable to Household Goods in Use Carriers*, Docket No. L-2013-2376902 (Order entered June 19, 2014).

Using that same rationale here, the Commission should decline to consider the effect of experimental service on existing carriers. At the very least, the Commission should adopt a strict view of the type of authority that is required to protest an experimental service application seeking to offer technology-enabled affordable, reliable ride-sharing alternatives and dismiss the protests of Concord and Luxury Sedan for lack of standing. Further, the Commission should expeditiously approve Rasier-PA's application without a hearing.

V. **CONCLUSION**

WHEREFORE, Rasier-PA LLC respectfully requests that the Commission undertake interlocutory review, answer the material question in the negative, dismiss the protests of Executive Transportation t/a Luxury Sedan and Concord Limousine, consider the unprotested application on its merits without a hearing, approve Rasier-PA's application requesting a certificate of public convenience to provide experimental ride-sharing network services in Allegheny County, and grant such as other relief as may be appropriate.

Respectfully submitted,

Dated: July 18, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Attorneys for Rasier-PA, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing : Docket No. A-2014-2416127
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
Allegheny County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via E-Mail and/or First-Class Mail

Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
malong@pa.gov

Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
jeffwatson@pa.gov

Ray F. Middleman, Esquire
Paul S. Guarneri, Esquire
Malone Middleman, P.C.
Wexford Professional Building III
11676 Perry Highway, Suite 3100
Wexford, PA 15090
Attorneys for PAJ

Michael S. Henry, Esquire
Michael S. Henry LLC
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@mshenrylaw.com
*Attorney for Concord Limousine and
Executive Transportation*

Samuel R. Marshall
President & CEO
The Insurance Federation of Pennsylvania, Inc.
1600 Market Street, Suite 1720
Philadelphia, PA 19103
smarshall@ifpenn.org

David W. Donley, Esquire
3361 Stafford Street
Pittsburgh, PA 15204
Attorney for JB Taxi

Dated this 18th day of July, 2014.



Karen O. Moury, Esq.