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July 25, 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 Rasier-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 the Commonwealth of Pennsylvania, Excluding Designated Counties
Docket No. A-2014-2424608

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC., I have enclosed for electronic filing the Amended Preliminary Objections of Rasier-PA LLC to the Protest and Petition to Intervene of JB Taxi LLC in the above-captioned matter.

Following the prehearing conference on July 24, 2014, Rasier PA LLC discovered that it had neglected to refer in the Preliminary Objections filed on July 21, 2014 to JB Taxi LLC's lack of authority to serve in the counties covered by this application. Therefore, the Amended Preliminary Objections contain revisions to Paragraphs 3 and 6 and include a new Paragraph 16. Other than the numbering following Paragraph 16, no other changes have been made.

In the event that the Commission or Administrative Law Judges are not willing to accept the filing of Amended Preliminary Objections for this purpose, I am also filing today a Motion for Partial Judgment on the Pleadings.

July 25, 2014
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Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen O. Moury".

Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Raiser-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing : Docket No. A-2014-2424608
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
the Commonwealth of Pennsylvania, Excluding :
Designated Counties :

NOTICE TO PLEAD

TO: David W. Donley, Esquire
3361 Stafford Street
Pittsburgh, PA 15204

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Amended Preliminary Objections of Raiser-PA LLC to the Protest of JB Taxi LLC, t/a County Taxi Cab within **ten (10) days** from service of this Notice, the facts set forth by Raiser-PA LLC in the Amended Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Raiser-PA LLC, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: July 25, 2014



Karen O. Moury, Esq.

**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-2014-2424608
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
the Commonwealth of Pennsylvania, Excluding :
Designated Counties :

**AMENDED PRELIMINARY OBJECTIONS
TO THE PROTEST OF JB TAXI LLC, T/A COUNTY TAXI CAB**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Rasier-PA LLC, a wholly owned subsidiary of Uber Technologies, Inc. (“Rasier-PA”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files these Amended Preliminary Objections pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.101(a)(4) and (7), seeking to dismiss the protest filed by JB Taxi LLC, t/a County Taxi Cab (“Protestant” or “JB Taxi”) and in support thereof, avers as follows:

I. Summary of Argument

1. Rasier-PA seeks dismissal of Protestant’s protest on the grounds that Protestant lacks standing. It is beyond dispute that Protestant’s authority to operate as a common carrier does not present an actual or potential conflict with Rasier-PA’s proposed services. Therefore, consistent with the Commission's well-established precedent, Protestant lacks standing and its protest must be dismissed in its entirety. Moreover, the protest should be dismissed on the basis that it is legally insufficient and fails to state a claim upon which relief can be granted. Specifically, Protestant has failed to make any factual averments warranting a hearing. Instead, Protestant’s protest is made up of legal conclusions, argumentative allegations, and expressions

of opinion about the nature of the proposed service that have already been addressed and rejected by the Commission.

2. The Commission should expeditiously approve Rasier-PA's application for experimental ride-sharing network services. Rasier-PA proposes to use a digital platform to connect passengers to independent ride-sharing operators. By allowing riders to request transportation through the 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.¹ Pointing to the use of an App-based technology as allowing for wider ranging, faster and more user friendly scheduling of transportation, the Commission has previously recognized similar services as being sufficiently distinguishable from limousine and call or demand service so as to qualify for the separate classification of common carrier authority known as experimental service under the Commission’s regulations.

II. Introduction and Background

3. On June 2, 2014, Rasier-PA filed an application, pursuant to 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 Commonwealth of Pennsylvania, excluding designated counties.¹ Rasier-PA is a limited liability company organized under the laws of Delaware and registered as a foreign limited liability company with the Pennsylvania Department of State at Corporation Bureau Entity Identification Number 4262217.

4. 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

¹ The counties that were excluded from the original application included Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union.

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 to an existing certificate in order to allow to be provided a *new, innovative or experimental type or class of common carrier service*. An application for a certificate or amendment shall state that it is an application for an experimental service.

52 Pa. Code § 29.352 (emphasis added).

5. Notice of Rasier-PA's application was published in the *Pennsylvania Bulletin* on June 14, 2014. Protests were due by June 30, 2014.

6. Protestant filed a timely protest, asserting that it holds call and demand authority from the Commission. In the protest, Protestant describes them as "four western Pennsylvania counties." A review of the Commission's docket shows that JB Taxi holds Commission authority in Beaver, Lawrence, Mercer and Crawford Counties, which are all counties excluded from Rasier-PA's application. *Application of JB Taxi LLC*, Docket No. A-2008-2065173 (June 10, 2011).²

7. Through these Preliminary Objections, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(4) and (7), Rasier-PA seeks dismissal of Protestant's protest on the grounds that Protestant lacks standing to participate in the proceeding and that the protest is a legally insufficient pleading that fails to state a claim upon which relief may be granted.

III. Legal Standards Applicable to Preliminary Objections

8. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation*

² Although Section 3.381(c)(1)(i)(A) of the Commission's regulations require protestants to include a docket number and description of their Commission authority, JB Taxi failed to provide that with its protest. The authority may be viewed in certificate of public convenience that is available on the Commission's website: <http://www.puc.pa.gov/pcdocs/1143015.doc>.

Interveners v. Equitable Gas Company, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

9. The grounds for preliminary objections are limited to those set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

10. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, supra.

11. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa.Cmwlth. 2007).

IV. Argument

A. Preliminary Objection No. 1: Lack of Standing

12. Protestant currently holds authority to provide call or demand service from the Commission in four counties that were excluded from Rasier-PA's application. The protest should be dismissed on the basis of lack of standing, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(7).

13. Standing to participate in proceedings before an administrative agency is primarily with 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).

14. 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 the *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).

15. Based on the fact that JB Taxi does not hold authority as a motor common carrier in Allegheny County, Administrative Law Judges (“ALJs”) Long and Watson issued an Initial Decision granting the preliminary objections of Rasier-PA in its application to provide experimental ridesharing network service in Allegheny County and dismissing the protest. *See Application of Rasier-PA, LLC*, Docket No. A-2014-2416127 (Initial Decision dated July 1, 2014). Noting that JB Taxi does not hold operating authority within the service territory requested in the application, the ALJs found that it does not have a direct interest in the application. Likewise, the ALJs denied JB Taxi’s Petition to Intervene based on the lack of sufficient interests that are not adequately represented by other parties in the proceeding. Seeking to intervene is simply an attempt to circumvent the necessary standing to protest the application. The ALJs’ rationale in the Initial Decision dated July 1, 2014 should apply here, resulting in the dismissal of JB Taxi’s protest and the denial of its petition to intervene.

16. 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 its 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 sought to liken the proposed service to the protestant’s existing call or demand service. Upholding the initial decision of the administrative law judge, the Commission found that he had correctly determined

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.

17. Likewise, 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 Protestant. Under Rasier-PA's proposal, riders would request transportation through the Internet or a mobile application ("App") on their smartphones. 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.

18. 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.*

19. 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 or, at the very least, 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.

20. Since Rasier-PA’s application proposes experimental service that is distinguishable from the service currently offered by the Protestant, the latter’s existing common carrier authority does not confer standing upon which to oppose this application. Therefore, the protest should be dismissed on the basis of lack of standing pursuant to the Commission’s regulations at 52 Pa. Code § 5.101(a).

B. Preliminary Objection No. 2: Legal Sufficiency of Pleading

21. The protest should be dismissed pursuant to the Commission’s regulations at 52 Pa. Code § 5.101(a)(4) on the basis that it is a legally insufficient pleading and fails to state a claim upon which relief may be granted. Rather than making factual averments necessitating a hearing, the protest offers conclusions of law, argumentative allegations and/or expressions of opinion, which do not warrant the scheduling of a hearing. A hearing is not necessary and would not serve the public interest in this matter. *See* 66 Pa.C.S. § 703(b).

22. The Commission has already addressed and nullified the conclusions of law, argumentative allegations and/or expressions of opinion offered by the protest in its action in the *Yellow Cab Order*. Finding that the proposed service was the type of new, innovative service that qualifies as experimental service under the regulations, the Commission stressed in the *Yellow Cab Order* the importance of ensuing that the current regulatory structure is not a barrier to desirable changes in the transportation industry facilitated by advancements in technology.

23. As a result of the Commission's findings in the *Yellow Cab Order*, the protest's legal claims about the nature, legality and proper classification of the proposed service have already been addressed, need not be subjected to a hearing and state no basis upon which relief can be granted.

24. The protest's general allegations regarding public need do not present sufficient information to warrant a hearing or further consideration by the Commission. In the *Yellow Cab Order*, the Commission has already found that the proposed experimental service is responsive to a public demand or need, observing that this type of service allows for a wider ranging, faster and more user friendly scheduling of transportation services. The Commission did not consider the effect that the proposed experimental service would have on existing motor carriers.

25. The protest's general allegations regarding fitness fail to provide a basis for scheduling a hearing. *See Application of Distribution Freight Systems, Inc.*, Docket No. A-00107826, 1988 Pa. PUC Lexis 102 (January 28, 1988).

26. Moreover, allegations regarding the ability of Rasier-PA to comply with the Commission's insurance requirements are unfounded and do not warrant a hearing. Rasier-PA has stated in its application that it will provide documentation to the Commission evidencing insurance coverage that exceeds the Commission's requirements, and it is within the scope of the Commission's power and authority to determine whether Rasier-PA's proof of insurance

complies with its requirements. In the *Yellow Cab Order*, the Commission thoroughly addressed the subject of insurance and conditionally approved the application upon the filing of acceptable insurance documentation.

27. The protest should be dismissed pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(4) on the basis that it is a legally insufficient pleading and fails to state a claim upon which relief may be granted.

V. Conclusion

WHEREFORE, for the foregoing reasons, Rasier-PA LLC respectfully requests that the Commission grant these Preliminary Objections, dismiss the protest filed by Protestant and grant Rasier-PA such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: July 25, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
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Attorneys for Rasier-PA LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
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Certificate of Public Convenience Evidencing : Docket No. A-2014-2424608
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
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Designated Counties :

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

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Dated this 25th day of July, 2014.



Karen O. Moury, Esq.