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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 Motion for Partial Judgment on the Pleadings as to the Protest of JB Taxi LLC, t/a County Taxi Cab 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: 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-2014-2424608  
Approval to Operate an Experimental :  
Ride-Sharing Network Service Between Points in :  
the Commonwealth of Pennsylvania, Excluding :  
Designated Counties :

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**NOTICE TO PLEAD**

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

Pursuant to 52 Pa. Code § 5.103(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of Rasier-PA LLC within **twenty (20) days** from service of this Notice, the facts set forth by Rasier-PA LLC in the Motion may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Rasier-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, Esq.  
Buchanan Ingersoll & Rooney PC  
409 N. Second Street  
Suite 500  
Harrisburg, PA 17101

Dated: July 25, 2014



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :  
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**MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS  
AS 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 this Motion for Partial Judgment on the Pleadings, pursuant to Section 5.102(a) of the Commission’s regulations, 52 Pa. Code § 5.102(a), requesting dismissal of 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 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. 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.<sup>1</sup> 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 service, group and party service, airport transfer service, paratransit service and scheduled route service, and describe it as follows:

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

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 the existing authority as covering "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).<sup>2</sup> Rasier-PA filed timely Preliminary Objections on July 21, 2014, which neglected to specify JB Taxi's authority and assert the lack of overlap between that authority and the proposed service area in Rasier-PA's application. Amended Preliminary Objections were filed on July 25, 2014.

7. Through this Partial Motion for Judgment on the Pleadings, Rasier-PA seeks dismissal of Protestant's protest on the grounds that Protestant lacks standing to participate in the proceeding and that the protest fails to state a claim upon which relief may be granted.

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<sup>2</sup> 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>.

### **III. Legal Standards Applicable to Judgment on the Pleadings**

8. A motion for judgment on the pleadings may be granted if the applicable pleadings, depositions, answers to interrogatories and admissions, etc. demonstrate that there is no genuine issue of material fact in dispute and the moving party is entitled to judgment in its favor as a matter of law. 52 Pa. Code § 5.102(d)(1).

9. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. *Kenneth E. Nein v. UGI Utilities, Inc.*, Docket No. C-2012-2298099 (Final Order entered November 9, 2012) (citing *Williams v. Lewis*, 446 A. 2d 682 (Pa.Super. 1983)); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d//b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Id.* (citing *Reuben v. O'Brien*, 496 A. 2d 913 (Pa.Super. 1985)).

### **IV. Argument**

10. 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.

11. 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).

12. 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. *See Application of Germantown Cab Company*, Docket No. A-2012-2295131 (Initial Decision served August 23, 2012 (and the cases cited therein)).

13. 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.

14. 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*").

15. The protest should also be dismissed on the basis that 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).

16. 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 *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (May 22, 2014) ("*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.

17. 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.

18. 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.

19. 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).

20. 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.

21. The protest should be dismissed on the basis of lack of standing and that it 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 this Motion for Partial Judgment on the Pleadings, 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



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Harrisburg, PA 17101-1357  
(717) 237-4820

*Attorneys for Rasier-PA LLC*

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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**

Mary D. Long  
Administrative Law Judge  
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Dated this 25<sup>th</sup> day of July, 2014.



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Karen O. Moury, Esq.