

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2424608

RASIER-PA, LLC

ANSWER TO PRELIMINARY OBJECTIONS

Protestants, BM Enterprises, Inc., t/a A.G. Taxi, Bucks County Services, Inc., Dee Dee Cab Company, Germantown Cab Company, Ronald Cab, Inc., t/a Community Cab, Shawn Cab, Inc., t/a Delaware County Cab and Sawink, Inc., t/a County Cab (hereinafter collectively referred to as “Protestants”), by and through its attorney, Michael S. Henry, Esquire, hereby responds to the preliminary objections of Applicant as follows:

I. SUMMARY OF ARGUMENT

1. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, resolution of the issues raised by Applicant in its Preliminary Objections is governed by the prior decisions of the Administrative Law Judges (“ALJ’s”) assigned to this matter and the Commission, which have been issued in other related matters. See *Application of Rasier-PA, LLC*,

Docket No. A-2014-2416127, Interim Order Denying Preliminary Objections of Rasier-PA, LLC to Protest of Concord Limousine, Inc., copy attached. See also, Application of Rasier-PA, LLC, Docket No. P-2014-2431743, Opinion and Order denying Petition of Raiser-PA, LLC, for Interlocutory Review and Answer to Material Question, copy attached. The foregoing opinions and their reasoning are hereby incorporated by reference. Accordingly, the Preliminary Objections should be denied.

2. Denied. Protestants hereby incorporate the response to paragraph 1 above as if the same were fully set forth herein at length.

3. Denied as stated. It is admitted that Applicant, Rasier-PA, LLC (“Rasier”), filed an application on or about June 2, 2014. Since the application speaks for itself, the remaining averments are denied to the extent they are inconsistent therewith. By way of further answer, Protestants dispute Applicant’s claim that it is applying for experimental service within the meaning of 52 Pa. Code §29.352. On the contrary, Protestants assert that the Applicant is applying for the right to act as a broker within the meaning of Section 2502 of the Public Utility Code, 66 Pa. C.S. §2502, to facilitate call or demand and/or limousine service by uncertified providers, which will have a direct and immediate adverse impact on Protestants’ right to provide limousine service in Pennsylvania under its duly issued certificate of public

convenience. Thus, there is a genuine dispute between the parties as to the very nature of the application that cannot be resolved by way of preliminary objections.

4. Admitted.

5. Admitted.

6. Denied as stated. It is admitted that each Protestant filed a timely protest. Since the protest speaks for itself, the remaining averments in this paragraph are denied to the extent they are inconsistent therewith.

7. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Protestants have alleged sufficient fact, which it will prove at any evidentiary hearings held in this matter, that they have standing because the application seeks authorization to provide services as a broker within the meaning of Section 2502 of the Public Utility Code, 66 Pa. C.S. §2502, to facilitate limousine service by uncertified providers, which will have a direct and immediate impact on Protestants' right to provide limousine service under its duly issued certificate of public convenience.

By way of further answer, like the application and the preliminary objections filed by Applicant, the protest contains legal allegations, not conclusions. Protestants assert that it has substantial

evidence to support its legal allegations and to contradict the legal allegations in the application. Protestants further assert that due process requires that Protestants be given an opportunity to present evidence at a hearing to resolve a genuine factual dispute between the parties, so that the Commission may determine whose legal allegations are founded. Accordingly, Protestants assert that it is premature for the Commission to dismiss the protests based on preliminary objections because there is a genuine dispute between the parties as to the underlying facts upon which the application is based and the Commission must, at this stage of the proceedings, accept all of the well-pleaded facts contained in the protest as true for the purpose of deciding preliminary objections.

8. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

9. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

10. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

11. Denied. The averments in this paragraph contain conclusions of law to which no response is required.

IV. ARGUMENT

A. Preliminary Objection No. 1: Lack of Standing

12. Denied as stated. This paragraph contains allegations relating to the protests, which speaks for themselves; therefore the averments in this paragraph are denied to the extent they are inconsistent with the protest. By way of further answer, Protestants have standing to protest the application in this matter because the application proposes to facilitate the provision of transportation service by uncertified providers by connecting passengers and drivers through the use of an online enabled platform. The provision of transportation service by uncertified providers will have a direct and immediate adverse impact of Protestants' rights to provide transportation service in Pennsylvania.

13. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Protestants assert that the transportation service that will be provided if the application is granted is, in reality, illegal call or demand and/or limousine service, which will be in actual or potential conflict with Protestants' authority.

14. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, Applicant proposes to facilitate the provision of transportation service by uncertified

providers by connecting passengers and drivers through the use of an online enabled platform. It is illegal under Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, to facilitate transportation service by uncertified providers and the facilitation of such service will be in actual or potential conflict with Protestants service.¹ Service providers are required to obtain a certificate of public convenience prior to providing service. The present application seeks authority to facilitate transportation service, not to provide transportation service directly.

15. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Protests in the present case are easily distinguishable from the Protestant that was dismissed in *Application of Danach, LLC*, Docket No. A-2013-2391804. Unlike the present case, the applicant in *Danach* was proposing to provide limousine service in its own vehicles using the telephone application at issue in the present case, not to facilitate transportation service provided by uncertified carriers. Unlike the present case, the protests filed in *Danach* did

¹ 66 Pa. C.S. §1101 states: “Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience *first had and obtained*, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.” (emphasis added)

not allege that the proposed service was illegal nor did they allege that the proposed service was indistinguishable from call or demand service as the protests in the present case allege. The protestant later objected that the proposed service was indistinguishable from call or demand service in its exceptions, but never raised the issue of illegal service. By way of further answer, it should be noted that the Commission's opinion and order in *Danach* is currently under review by the Commonwealth Court. *Germantown Cab Company v. Pennsylvania Public Utility Commission*, Docket No. 1239 C.D. 2014. Furthermore, the ALJ's in this case have already ruled in other related matters that, as a matter of discretion, they would allow protests to proceed that contain allegations that the proposed service is indistinguishable from other classes of motor carrier service.

16. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the applicant proposes to facilitate transportation services by uncertified carriers, which is illegal. The provision of illegal service by uncertified carriers within Protestants' authorized territories places it actual conflict with Protestants' authorization. By way of further answer, the application in *Yellow Cab* was not protested and in that case the applicant was proposing to provide transportation service directly. On this basis, the present application

is easily distinguishable from the application in the *Yellow Cab* case. Furthermore, the ALJ's have rejected the same argument raised here by the applicant in other related proceedings as set forth above.

17. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, unofficial statements made by individual Commissioners in connection with the *Yellow Cab* case have no bearing on the present matter for the reasons set forth above and do not take into account the illegal nature of the proposed service in the present matter. Furthermore, the ALJ's in the present matter have rejected the same argument raised here by the applicant in other related proceedings as set forth above.

18. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Commission is not free to ignore the legislative mandates imposed upon it to implement, administer and enforce the Public Utility Code. The General Assembly did not delegate power to the Commission to formulate policy as to the value or desirability of applying and enforcing legislatively adopted standards.

19. Denied. It is denied that the applicant proposes to provide service that is distinguishable from the service provided by Protestants. On

the contrary, Protestants assert that the Applicant does not propose to provide any service at all, but rather to facilitate service that is both illegal and indistinguishable from the service provided by Protestants.

**RESPONSE TO PRELIMINARY OBJECTION 2
LEGAL INSUFFICIENCY OF PLEADING**

20. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the protests seek dismissal of the application based on the fact that it seeks authorization to facilitate the provision of transportation service by uncertified providers, which is clearly illegal. The Commission most certainly has the power to deny an application to provide illegal service. By way of further answer, a hearing is required in this matter because the facts upon which the parties rely in support of their legal allegations are in dispute. Furthermore, the ALJ's in this matter have already issued rulings rejecting the same arguments issues raised by the applicant in other proceedings.

21. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the protest contains both factual and legal allegations, both of which are in dispute and may only be resolved through the scheduling of evidentiary hearings, the submission of briefs on the legal issues, and a recommend decision by an administrative law judge. By way of further answer, the Commission's

decision and order in the *Yellow Cab* case is easily distinguishable from the present application proceeding for the reasons set forth above and does not dictate an outcome here. In fact, the Commission's approval of an extension of existing authority in the *Yellow Cab* case supports Protestants' position in this matter because the Commission's approval was based on the fact that the *Yellow Cab* would be providing the service the Commission deemed experimental, unlike the present case where the proposed service would be provided by uncertified providers. By way of further answer, the use of an online enabled platform to facilitate communications between passengers and service providers is the latest innovative use of advanced communications technology; however, the underlying transportation service remains relatively unchanged and cannot be distinguished in any meaningful way from limousine and call or demand service. The fact that a transportation provider can access a communication system that is more efficient and reliable does not relieve the transportation provider from the necessity of complying with the Public Utility Code's requirement of first obtaining a certificate of public convenience, nor does it give the communications provider the basis for an application for any form of motor carrier service.

22. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, as fully explained above, the present application is easily distinguishable from the application that was at issue in the *Yellow Cab* and presents factual and legal issues that were not before the Commission in that case. Accordingly, hearings are necessary, as well as the submission of briefs, in order to resolve the factual and legal issues presented herein.

23. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Commission's finding regarding public need for the service at issue in that matter is not relevant to the present proceeding. The Applicant in this matter bears the burden of establishing that there is a public need for the proposed service. Such need is not self-evident merely because the applicant proposes to facilitate transportation service using an innovative technology.

24. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the issues of fitness raised by Protestants clearly warrant a hearing, particularly with regard to the issue of insurance. The facilitation of transportation services provided by private individuals in their own vehicles raises significant and very troubling issues about the insurability of the proposed service, since

most private automobile policies contain a livery exception and no insurance policy covers property in which the policy holder has no insurable interest. By way of further answer, Protestants are not opposed to the use of innovative technology to make transportation service more reliable and efficient. Protestants object to the provision of transportation service by uncertified providers, particularly where the service is indistinguishable in any meaningful way from limousine and call or demand service and will have an immediate and direct adverse impact on Protestants' operations. Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101, is explicit. It is unlawful to provide transportation without first obtaining a certificate of public convenience and it is unlawful to facilitate such transportation. There is nothing experimental about facilitating unlawful transportation.

25. Denied. The averments in this paragraph contain conclusions of law to which no response is required. By way of further answer, the Applicant has the burden of proving that it can obtain insurance coverage in compliance with the Commission's requirements. Protestants dispute the Applicant's factual allegations concerning its ability to obtain insurance to cover the operation of privately owned vehicles that provide transportation for hire in light of universally employed livery exceptions that are part of every private passenger insurance policy issued in this Commonwealth.

Furthermore, Protestants dispute Applicants factual allegation that it can obtain insurance to cover the operations of vehicle in which it has no insurable interest. This is a factual dispute that must be resolved with evidentiary hearings. The fact that the Applicant bases its preliminary objection on the fact that it can produce evidence that it can meet the Commission's insurance requirements reveals the necessity for hearings in this matter.

26. Denied. The averments in this paragraph contain conclusions of law to which no response is required. Furthermore, the ALJ's in this matter have already ruled against the Applicant with regard to identical issues raised in other proceedings as set forth above.

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

Respectfully submitted,
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Date: July 29, 2014

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CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Answer to the following:

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