

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

PROTESTANT CAPITAL CITY CAB SERVICE'S BRIEF IN OPPOSITION TO THE
APPLICATION

Due Date: 9/15/14

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BACKGROUND/STATEMENT OF FACTS

Applicant, wholly-owned subsidiary of Uber Technologies (Hearing Transcript p 53), filed an Application for Experimental Service in Allegheny County in April, 2014, and followed up with a similar Application for 57 of the remaining 66 Pennsylvania Counties on June 12, 2014. Uber Technologies also maintains subsidiaries, Rasier, LLC (HT 81), and Gegan, LLC in operation in Pennsylvania (HT 60).

Applicant proposes what it calls an “Experimental Service,” (HT 83), whereby it uses a smartphone “app” to connect prospective passengers with private contractor drivers using their own private vehicles (HT 55-58). Applicant would then be paid a percentage of the price of the trip, which would be based on time and mileage and would be charged to a credit card number retained by Applicant (HT 56). Applicant explicitly eschews any other label, refusing even to call itself a “transportation company” (HT 92), instead attempting to create for itself a new class of service, which, ostensibly, would operate under a new set of rules different from other services that involve the carriage of passengers from point-to-point for payment tailored for the length and time of the trip.

On July 2, 2014, the Commission, through this Court, issued a Cease and Desist Order on the presented evidence that Applicant's sister company, Rasier, LLC (offering precisely the same service), was operating in lieu of any Commission authority (see

Cease and Desist Order). On July 24, 2014, Applicant obtained Emergency Temporary Authority from the Commission through this Court. In an Initial Hearing August 18-19, 2014, Matthew Gore, a current member of management for parent Uber Technologies, and, until shortly before that hearing, the Assistant General Manager for Uber-Pittsburgh, admitted that Applicant's sister company, Rasier, LLC, had defied the July 2, 2014 Cease and Desist Order, continuing to operate up to and until the ETA was obtained some three weeks later (HT 83). An additional hearing, primarily on insurance matters related to this case, was held on September 9, 2014.

There are two outstanding Motions in this case, both made by Protestant counsel Justine Pate. The first is for dismissal of the Application based on Applicant's defiance of the July 31 Order requiring that it provide certain information related to Rasier, LLC's dealings in the period between the Cease and Desist Order, and the July 24 acquisition of ETA (HT 253). The second Motion is generally for Summary Judgment based on the asserted failure of Applicant to provide any need evidence (HT 338), in defiance of 52 Pa. Code 41.14, which addresses the requirements of all Applicant common carriers generally. This brief addresses the Application in general, as well as both of those Motions.

QUESTIONS PRESENTED

I Is Applicant a “Call and Demand Common Carrier” under PUC regulations?

Suggested Answer: Yes

II Does Applicant fail to meet all of the criteria of 52 Pa. Code 41.14?

Suggested Answer Yes

III Will create new separate rules for Applicant violate the Equal Protection Clause of the United States Constitution?

Suggested Answer Yes

SUMMARY OF ARGUMENT

As transcript availability for the September 9 hearing necessarily limits the amount of time available to both dissect Applicant's testimony and include same in this brief, the only references to insurance made here will refer to testimony given at the August 18-19 hearing.

The August 18-19 hearing in this matter produced a transcript of approximately 500 pages. From the length of the September 9 hearing, a transcript of approximately 300

more pages is expected. Those 800 pages of testimony include countless obfuscations by Defendant's representatives, failure to know even some of the basic facts about Applicant's operation (HT in many places), and outright refusal to answer legitimate basic questions about said operation (HT 253). Applicant's key witness, Uber manager Matthew Gore, a University of Chicago Business School graduate (HT 50) with additional experience as a submariner for the United States Navy, did not know how the balance sheet submitted by Defendant as part of the record was prepared (Applicant Exhibit 2)(HT 198) and could not answer basic questions about the etymology of trips (or :”rides” as called by Applicant) (HT 225-226). Much of the time allotted for testimony in this case was wasted attempting to get any adequate answer from Applicant's witnesses, often to some very basic questions. While Applicant scores no obvious demerits for such obfuscation, the question beckons as to whether this indicates, as per 52 Pa. Code 41.14, adequate technical ability (if a high-ranking manager really does not know the details of his recently managed operation) or propensity to operate legally (if said witnesses are lying to the court).

That said, the first legal threshold that must be crossed here is, just what is the nature of Applicant? Is it a “broker” or a “ridesharing service?” Neither of those are expressly permitted by the state legislature, and the Commission is not empowered in any way to grant authority to such entities. All indications are that Applicant's service will function,

or at least compete for precisely the same customers, as existing Call and Demand services in the Commonwealth. That is, to provide or arrange point-to-point transportation for individuals who will pay based on time and/or distance. Of the two primary differences, the one trumpeted by Applicant and others is the most de minimis. The use of a smartphone app to connect prospective passengers with providers is already in place among certificated carriers in Harrisburg (HT184-188), Pittsburgh (HT 187) and Philadelphia (HT 367). The one difference that matters is the use of private vehicles and private drivers, which produces a myriad of problems and is clearly against the public interest.

But, if Applicant is simply a prospective Call and Demand carrier, than it must also abide by the policy criteria set forth in 52 Pa. Code 41.14. Even if this court finds that Applicant is providing some sort of “different” service, the Code provision still applies, as same refers to “Common Carriers” of any sort. In short, Applicant has produced no evidence of need germane to any territory in Pennsylvania outside of Allegheny County, produced a “balance sheet” which indicates a \$1.3 million loss in the first year of operation (Applicant exhibit 2) (HT 58), and either demonstrated a lack of basic knowledge of its own operation or a propensity to lie to the court. Protestant submits that Applicant's testimony fails to show that it can meet **any** of the requirements of 52 Pa. Code 41.14. In addition to Applicant's clear refusal (HT 253) to answer Court

Ordered questions about its operation, the record shows clearly that one or both Motions currently before the Court should be granted. This Application should, for many reasons, be dismissed.

ARGUMENT

I Applicant is a prospective Call and Demand operation.

A The nature of Applicant's business model, as revealed at the Initial Hearing, lend itself to Call and Demand service

4At the Initial Hearing August 18-19, 2014, Applicant's primary witness, Matthew Gore, testified as to the steps that would occur when a member of the riding public requested a pickup. First, a prospective customer would contact Applicant through a smartphone app (HT 55-56). The request would travel, via the internet, to a server (HT 189, although Gore apparently did not know the location of the server). Said request would then travel back to the “nearest” driver available, who would then retrieve the passenger. (HT 56) Payment would apparently be through either a credit card number retained by Applicant, or PayPal, or some other electronic means (HT 230). Gore did indicate that there were periods in which none of Applicant's vehicles would be available. (HT 230)

The Pennsylvania legislature defines, at 66 Pa. CS 102, the meaning of “common carrier:” and “common carrier by motor vehicle:”

"Common carrier." 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

"Common carrier by motor vehicle." Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, **whether or not the owner or operator of such motor vehicle,**...

53 Pa. Code 5701, which applies specifically to service under the jurisdiction of the Philadelphia Parking Authority, defines "Call and Demand" most clearly:

"Call or demand service" or "taxicab service." Local common carrier service for passengers, rendered on either an exclusive or 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.

Applicant is, at very least, a "common carrier by motor vehicle" under Pennsylvania law. It is not the individual operator who is "holding out, offering, or undertaking, directly or indirectly, service for compensation to the public;" rather Applicant is. Further, Gore testified clearly that "personal" calls, for which a prospective customer contacts the driver directly for compensation, are outside the purview of the service offered by Applicant (HT 214)

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(Order entered May 22, 2014), is distinguishable, as that opinion was based on an unopposed Application; the Commission was not being asked to rule on any question, including that of the nature of Applicant and other entities like it. The “by telephone call, or by hail, or both” clause of the definition of a “Call and Demand” carrier was written long before modern smartphone technology. Arguably, Applicant's smartphone app is merely a sophisticated way to “hail” or “call” Applicant for a ride.

B If this Court finds Applicant to be a ride-sharing or brokerage service, the Application must be dismissed, as the state legislature does not allow for the existence of such services.

If Applicant is not, by its own testimony, a “transportation company” (HT 92), it also cannot define itself as a “rideshare network” or “brokerage.” “Ridesharing” for commercial purposes is expressly illegal in Pennsylvania. Permitted ridesharing is defined in 55 P.S. 695.1 et seq:

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.

Anticipated are carpools, and employer-arranged transportation to a worksite. But, once the transportation provider crosses the line and receives compensation, they are a “Common Carrier,” they must obtain a Certificate of Public Convenience from the PUC, and must meet the criteria, as defined by Commission and Commonwealth precedent, of 52 Pa. Code 41.14. 66 Pa. C.S. 1101. Also see 53 Pa. C.S. 5714 and 5741 (relevant to Philadelphia-based carriers).

The Commission regulations regarding “brokers” are slightly different, but render the same result. A “broker” must use a duly Certificated transportation provider to provide the services it seeks. 52 Pa. Code 39.5 While, arguably this same ability could be extended to Medallion owners/lessees under the jurisdiction of the Philadelphia Parking Authority, the regulations are clear that some legally procured operating authority must be obtained for the broker to use the provider, and for the provider to accept business. This flies in the face of Applicant's business model, as the only authority required of Applicant's prospective drivers is a valid Pennsylvania Driver's License (HT 63). Therefore, Applicant cannot operate as a broker, unless it requires its alleged Independent Contractor drivers (HT 71) to obtain a Certificate of Public Convenience as required by 66 Pa. C.S. 1101.

If this court and/or the Commission finds that Applicant is, in fact, either type of service, the Application must be dismissed, as neither class is permitted under Pennsylvania law in the fashion sought to be undertaken by Applicant.

C The differences between Applicant and existing Call and Demand Services are either de minimis, and used by existing Call and Demand carriers, or problematic.

1 Phone apps are in use right now in the taxi industry in Pennsylvania.

The much-trumpeted (by Applicant and others) difference between Applicant and Call and Demand carriers involves Applicant's intended use of the Uber smartphone app (HT 55), which would allegedly connect prospective customers with drivers through an internet-based server (HT 301). There is nothing in Pennsylvania law or Commission regulations that specifically prohibits the use of such software by a duly Certificated Call and Demand carrier. Three witnesses at the August 18-19 hearing testified to that effect. Joshua Freedman, from Mechanicsburg, PA , testified as to his company, "CabbyGo," which connects Certificated Carrier drivers with prospective business in

much the same manner as Applicant's technology (HT 184). Khalid Alvi and Alex Friedman, driver and manager for All City Cabs in Philadelphia, went a step farther, describing a business model that not only includes a smartphone app for procurement of cabs (HT 367), but also includes in-cab video screens (HT 377) and machines that will disable the cab if the driver does not swipe his/her identification card before opening for business. Despite the Commission's nonbinding pronouncements in **Yellow Cab**, the use of smartphone technology does not distinguish Applicant from Call and Demand operators.

- 2 The use of private cars, only subject to PennDOT inspection, and private drivers, is against the public interest and could actually be a danger to the public.

Call and Demand operators must either own or lease their vehicles, or have their operators obtain a Certificate of Public Convenience as per 66 Pa. C.S. 1101, as well as 53 Pa. C.S. 5714 and 5741 (relevant to Philadelphia-based carriers). 52 Pa. Code 39.5 Applicant proposes to do neither. Applicant's key witness Gore testified repeatedly on August 18-19 that PennDOT inspection regulations are sufficient to determine the safety of a vehicle (HT 105), maintaining this even in the face of hypothetical scenarios that placed a vehicle at or near the end of its one year inspection cycle. (HT 211) Instead,

Gore inferred that the cosmetic condition of a vehicle, such as its interior or the presence of a scratch on the body, were far more important than the mechanical integrity of the vehicle (HT 107).

While, in order to obtain Emergency Temporary Authority, Applicant agreed to certain basic Commission rules (common to Call and Demand carriers), such as an 8-year, 100,000 mile limit on vehicles, an identification placard on all vehicles, and immediate inspection of a a vehicle at the behest of a Commission Motor Carrier Enforcement Officer (see ETA generally), Applicant's cavalier attitude toward both Commission regulations and Pennsylvania law (which will be discussed further below) suggests that Applicant's assent to the Commission's requirements are only to get through the hearing process.

The law is clear on independent owner-operator cab drivers under other entity's Medallion or Certificate. Either the Certificate/Medallion holder must own the vehicle, or the individual vehicle owner must obtain his/her own Certificate (with the central company acting as a “broker.” 52 Pa. Code 39.5 and 66 Pa CS 1101.

Further, while Applicant does claim to employ a driver-screening process (HT60-61), the random nature of vehicles not necessarily marked with a taxi logo, unique cab

number, or a PUC number lends itself to incidents which endanger the public.

http://www.pennlive.com/nation-world/2014/09/uber_driver_allegedly_pulls_gu.html#incart_river

II If a Applicant is at least a Motor Common Carrier, Applicant is subject to 52 Pa Code 41.14

A 52 Pa. Code 41.14 is the standard in Pennsylvania for the processing of Motor Common Carrier Applications

The language of same is plain, straightforward, and not difficult to understand:

41.14. Evidentiary criteria used to decide motor common carrier applications—
statement of policy.

(a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and

experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant's record, if any, of compliance with 66 Pa.C.S. (relating to the Public Utility Code), this title and the Commission's orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331—29.335 (relating to limousine service).

B Need was shown at all only in Allegheny County, and only on a minimal basis when Applicant's sister company was operating legally

In establishing need, a prospective carrier must consider the territory sought for operations, **Ace Moving & Storage v. Pennsylvania Public Utility Commission, 935**

A.2d 75, 78 (Cmnlth. Ct. 2007), and the specific type of service sought to be provided. Yellow Cab Company of Pittsburgh v. Pennsylvania Public Utility Commission, 673 A.2d 1015, 1018 (Pa. Cmwlt. 1996). The concept of “need” for a service can vary from one locality to another, Warminster Township Municipal Authority v. Pennsylvania Public Utility Commission, 138 A.2d 240 (Pa. Super. 1958), and does not require a present demand for service everywhere throughout the territory sought. Morgan Drive Away, Inc. v. Pennsylvania Public Utility Commission, 512 A.2d 1359 (Cmnlth. Ct. 1986).

Morgan Drive Away appears to be a key case for Applicant, as Applicant's case for need included: one individual who did not live in Pennsylvania (HT 168), a second who never used individual public transportation of any sort in Pennsylvania (HT 183), a third who used Applicant's sister company's services in Pennsylvania exactly once (in Allegheny County) (HT 47), and one, Salli Guzik, who used Applicant's sister company frequently in Allegheny County, including apparently multiple times during the July period while the Commission's Cease and Desist Order was in effect (HT 38). Said alleged illegal operations do not show need Bunting Bristol Transfer v PA. PUC, 418 PA 286, 210 A.2d 287 (1965), but lack of propensity to operate legally. Application of Ray K Bricker, 64 PA PUC 439 (1987)

Highway Express Lines, Inc. v. Pennsylvania Public Utility Commission, 195

Pa.Super. 92, 169 A.2d 798, 803 (Pa.Super.1961) does hold that need is based on future rather than present need, but the record is still sparse on that regard. In the best-case scenario for Applicant, three citizens of the Commonwealth indicated they would use the service (HT 36, 47, 187). Two, both in Allegheny County, have actually used the service in Pennsylvania; one of those just once (HT 47). Applicant had a chance to present either Verified Statements (see **Application of Blue Bird Coach Lines, Inc. (A-00088807, F.2, Am-K) 72 Pa. PUC 262 (1990)**) or specific request evidence (a specific ledger detailing requests for rides that could not be fulfilled) but did not. 52 Pa. Code 3.381(c)(1)(3)(A)

52 Pa. Code 3.384(b)(2) states that even Emergency Temporary Authority should not be granted if existing operations are available to provide the service. In Dauphin, Cumberland, York and Perry Counties, served by the present Protestant, at least four and as many as eight Call and Demand Carriers already are in service (Protest of Capital City Cab Service p. 1). In Philadelphia, there are approximately 1,600 Medallion Cabs in operation (HT 425). Hence, the ETA in this case was limited to Allegheny County; arguably that also should not have been granted in light of the “need” testimony presented on August 18-19. Applicant produced no witnesses in any but two of the counties (Allegheny and Lehigh) in which it seeks authority; the only “need” witness

who could testify with any authority regarding Applicant's sister company's service arguably used the service in lieu of any Commission authority given to Applicant's sister company to provide it.

Sparse relevant need has been provided for Allegheny County, no need has been shown anywhere else; the Application should be dismissed for failing to meet that burden.'

C Applicant does not possess the technical ability required.

As indicated earlier, Applicant's key witness on August 18-19, Matthew Gore, comes to the stand with a fairly impressive set of personal credentials. (HT 50) That said, the record of his two days of testimony is filled with a laundry list of aspects of his company's operation that he allegedly knew nothing about. An incomplete list (in the interest of brevity) to wit:

- 1 He did not know who would screen drivers for the prospective operation (HT 103)
- 2 He did not know who would inspect vehicles for the prospective operation (HT 105)
- 3 He did not know how many drivers were under contract for the

- prospective operation. (HT 112)
- 4 He did not understand the driver contracting process (HT 112-115)
 - 5 He did not know who would be giving out the identification placards required by the ETA (HT 117)
 - 6 He could not explain the roles of parent Uber Technologies and its various subsidiaries (HT 119)
 - 7 He could not explain the figures on the balance sheet submitted by Applicant (HT 234)

If Gore knows the answers to these and other operational questions and is simply refusing to reveal same, he is blatantly lying to the Commission and this Court, and, as an example of Applicant's management, demonstrates a lack of propensity to operate legally. If Protestants and the Court are to take him on face value that he really does not know such details, he also illustrates the lack of technical ability demonstrated by Applicant's management team. In either event, the Application should be dismissed.

Further, the Commission requires a rate tariff from each Common Carrier as set forth in 52 Pa. Code 23.11:

§ 23.11. Filing of rates.

(a) Before any carrier furnishes or offers to furnish any service, it shall file with the Commission tariffs showing the rates or other compensation demanded for such service, including COD services, and all rules governing the furnishing of the service or the application of the rates demanded therefor, if the filing of a tariff with the Commission is not construed as an approval by it of the rates or rules contained therein, or as a waiver of any other requirement of 66 Pa.C.S. § § 101—3315.

(b) The tariffs of carriers also subject to the jurisdiction of a Federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by such Federal agency.

Applicant provided a tariff, of sorts, at the August 18-19 hearing (Applicant exhibit 3), contains none of that information. Instead, reference is made to a “base rate” and a “multiplier.” with no indication of what either number is. Attempts to induce Gore to explain same under cross examination were unsuccessful. Either Applicant is inept, in not understanding the Commission requirements, or is in open defiance of the Commission by refusing to provide such necessary information. For either reason, the Application has to be dismissed

D Applicant does not possess the financial ability required

Applicant submits a balance sheet (Applicant exhibit 2) which contains specific numbers (as opposed to round approximations), an approximate \$2 million liability for office expenses, and a \$1.3 million projected loss in the first year of operation. (HT 61) When

cross examined, Gore could not explain how the numbers were devised (HT 198), why in the light of Applicant's purported introduction of "surge pricing," (a system whereby prices increase and/or decrease with demand, or on an arbitrary basis (HT 146)), such numbers could be so precise (HT 234). Nor could (or would) he explain the office expense and loss figures (HT 196) Again, taken at face value, an organization willing to take a \$1.3 million loss in one year (based on roughly 40 percent of revenue) without the ability (or willingness) explain same is not financially fit to receive a Certificate of Public Convenience.

The purported use of "Trade Secrets" law to protect the above (and other information) in this case (HT 251-252) also falls flat. 231 Pa. Code 4012 clearly provides for Protective Orders in the Commonwealth; no such order was ever sought. (HT 253)

E Applicant does not possess the propensity to operate legally

On July 2, 2014, a Cease and Desist Order was issued against Applicant's sister company, Rasier-LLC (see Cease and Desist Order). While Applicant apparently sought an ETA immediately, same was not granted until July 24, 2014. Based on the testimony of Ms. Guzik (HT 38) and Gore (HT 80), Rasier-LLC continued operating during the interim period. When questioned as why or on what authority Rasier-LLC could simply

defy the Commission and keep operating (HT 80-81), Gore offered platitudes regarding “customer service.”

At the August 18-19 hearing, Gore was asked by Protestants counsel Pate the same questions related in a July 31, 2014 Order (see Order, 7/31/14) and related to the Cease and Desist Order (see Cease and Desist Order) regarding both revenue and trip volume maintained by Rasier-LLC while it was operating without Commission authority (HT 251-253). Applicant refused to respond, again citing Trade Secrets law, though no relevant Protective Order was ever sought for any purpose in this case (HT 253)

It is clear that Applicant only plans on meeting Commission requirements to the degree required to receive Commission authority. Applicant has acted in open defiance of this Court, the Commission, and the Pennsylvania Rules of Civil Procedure (ignoring the Protective Order process) by refusing or obfuscating one answer after another related to its operation. While this Court cannot cite for Contempt (HT 495-496), the conclusion that Applicant does not take the Commission's regulations seriously should not be lost on the court; Attorney Pate's Motion to Dismiss (HT 253) for failure to show a propensity to operate legally should be entertained and granted, and the Application should be dismissed.

F The primary differences between Applicant's proposed operation and a Call and Demand carrier suggest an operation not in the public interest

1 Applicant intends to use Private vehicles which are only subject to PennDOT safety inspection so long as apparent cosmetic damage is not present

With the exception of the ETA, Applicant has shown a cavalier attitude toward Commission safety regulations (HT 107). Prior to the ETA, with an admission that Rasier-LLC defied the Cease and Desist Order (HT 80-83), Rasier-LLC did not subject any of the vehicles it had in use to Commission inspection.

In **Harrisburg Taxicab and Baggage v. Pennsylvania PUC, 786 A.2d 288 (Pa. Commw. 2001)**, the Commonwealth Court of Pennsylvania held that Commission safety regulations were at least concurrent with PennDOT regulations. At times, the Court held, PUC safety regulations superseded those of PennDOT. In essence, whichever regulations that enhanced public safety more were in effect.

Applicant's policy toward drivers' vehicles is apparently more slanted to cosmetic issues (HT 107). Applicant apparently intends to abide by the terms of the ETA; its recent track

record of making up its own rules speaks to the contrary.

2 Surge pricing is price-gouging, which is against the public interest.

Every Call and Demand carrier in Pennsylvania must submit a rate tariff to the Commission indicating specifically what rates it plans to charge, whether those rates change according to time of day, as well as a financial justification for any rate increase sought. 52 Pa Code 23.11. As stated before, Applicant's "tariff" (Applicant exhibit 3) included none of that information (HT 145). Instead, Applicant plans to use "surge pricing" which, as explained by Gore (HT 145), means that the base pricing rate (also not provided by Applicant) is then multiplied, ostensibly according to demand and conditions, but with that arbitrary decision made by Applicant management (HT 147).

The riding public cannot determine the base rate or the multiplier until they log on to the app (or the website) to book a trip. And, a trip at peak demand could simply increase in price until a driver takes the call (HT 230). In other words, Applicant wants to charge what it wants when it wants, and has the rider's credit card on file to assure payment (HT 230). There are few legal businesses that get away with that business model; to state that surge pricing is against the public interest is a gross understatement. The Application

should be dismissed simply to protect the public from predatory behavior.

G Attorney Pate's Summary Judgment motion must be granted on the basis of no presentation of need.

The Commission's standard for Summary Judgment is clear, not substantially different than that which is found in most civil jurisdictions, and is found at 52 Pa. Code 5.102(d) (1):

(d) Decisions on motions.

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

Accordingly:

The record must be viewed in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Summary judgment may be entered only in those cases where the right is clear and free from doubt. **Pennsylvania State Univ. v. County Of Centre, 532 Pa. 142, 144 - 145, 615 A.2d 303, 304 (1992) (citations omitted).**

Application of Blue Bird Coach Lines, Inc. (A-00088807, F.2, Am-K) 72 Pa. PUC

262 (1990) further elaborates on the commonly-applied need standard in Common

Carrier Applications:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witnesses' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that "approval of the applicant will serve a useful public purpose, responsive to a public demand or need."

The witnesses supporting the application must be legally competent and credible, offer relevant and probative testimony and articulate a demand or need for the service proposed by the application. The supporting witnesses must also identify origin and destination points required for their transportation and these points should correspond to the scope of the proposed operating territory in the application.

Id at 274

Again, Applicant present four “need” witnesses, two of whom have apparently never used individual public transportation in the Commonwealth; and the most credible witness with the most extensive experience probably used Applicant's sister company's services illegally.

Summary Judgment is appropriate in at least 56 of the 58 counties in which Applicant is seeking authority, (where no evidence of need is presented at all) including the four relevant to the present Protestant. Testimony regarding the two remaining counties, Lehigh and Allegheny are either flimsy at best, or based on likely illegal behavior on the part of Applicant. Summary Judgment should be granted for the entire Application.

III Creating a new set of rules for Applicant may lead to a violation of the Equal Protection Clause of the 14th Amendment regarding existing Call and Demand carriers.

Both Applicant and those carriers seek the precise same customer base in the same way; for the legislature or the Commission to carve out a specific new class just for Applicant, allowing it to skirt existing rules that others have to follow, unfairly discriminates against those carriers.

The 14th Amendment to the United States Constitution reads, in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The famous **Santa Clara County v. Southern Pacific Railroad Company**, 118 US 394 (1886) established the concept of “corporate personhood.” While legislation may be used to differentiate between “persons.” **Corman v NCAA**, 93 A.3d 1, 9 (PA. Commw. 2014), such legislation must be related to a legitimate state purpose, **Pa. Tpk. Comm'n v. Commonwealth**, 587 Pa. 347, 363-64, 899 A.2d 1085, 1094-95 (2006)

Both Applicant and Call and Demand carriers seek the same customer base: those individuals or small groups seeking point-to-point transportation for monetary compensation. While the Commission is no stranger to Equal Protection claims, none so far address two entities serving the same function; one of whom insists on classifying

itself as somehow different from the other. There is no such legislation currently in place, nor are there any “legitimate state purposes” stated, save for the specious “adopting innovative technology” claim made generally by Applicant throughout this case, and dealt with at length earlier in this brief (a Certificated Call and Demand carrier can just as easily use the new technology). Adopting the present law to favor Applicant, or any new legislation doing the same will fall outside Constitutional grounds.

IV CONCLUSION

Given the recent track record of Applicant's sister company in Pennsylvania, and Applicant's own performance at the present hearings, this Court and the Commission have exactly two choices under the current law. Authority can be granted to Applicant, with the tacit understanding that Applicant considers the Commission's regulations and Pennsylvania law as only obstacles to maneuver around, with the strong inference that the same behavior will not only continue but become even more brazen. Or Applicant can be denied authority and, at minimum, forced to return when it is both prepared and ready to take the Commission and its regulations seriously. Applicant obviously wants to reset the manner of operation in the taxicab business in Pennsylvania to that which is essentially out of Commission control. Not only have the burdens relevant to 52 Pa Code 41.14 not been met, but Applicant's intent is so obviously pernicious that this Application must be dismissed with prejudice.

V PROPOSED FINDINGS OF FACT

1 Applicant, a wholly-owned subsidiary of Uber Technologies (Hearing Transcript p
53), filed an Application for Experimental Service in Allegheny County in April, 2014,
and followed up with a similar Application for 57 of the remaining 66 Pennsylvania
Counties on June 12, 2014

2 Applicant plans to use a smartphone “app” to connect prospective passengers with
private contractor drivers using their own private vehicles (HT 55-58)

3 Uber Technologies also maintains subsidiaries, Rasier, LLC (HT 81), and Gegan,
LLC in operation in Pennsylvania (HT 60)

4 Applicant will, under its business model, be paid a percentage of the price of the
trip, which would be based on time and mileage and would be charged to a credit card
number retained by Applicant (HT 56).

5 Applicant refuses to call itself a “transportation company” (HT 92)

6 On July 2, 2014, the Commission, through this Court, issued a Cease and Desist

Order on the presented evidence that Applicant's sister company, Rasier, LLC (offering precisely the same service), was operating in lieu of any Commission authority (see Cease and Desist Order).

7 Matthew Gore, a current member of management for parent Uber Technologies, and, until shortly before the hearing, the Assistant General Manager for Uber-Pittsburgh, admitted that Applicant's sister company, Rasier, LLC, had defied the July 2, 2014 Cease and Desist Order, continuing to operate up to and until the ETA was obtained some three weeks later (HT 83)

8 The use of a smartphone app to connect prospective passengers with providers is already in place among certificated carriers in Harrisburg (HT 184-188), Pittsburgh (HT 187) and Philadelphia (HT 367)

VI PROPOSED CONCLUSIONS OF LAW

1 Applicant is a Call and Demand Common Carrier.

2 Applicant is therefore subject to the regulations espoused by the Commission at 52 Pa. Code 41.14.

3 Applicant's "tariff" (Applicant Exhibit 3) is inadequate to the requirements of 52 Pa. Code 23.11, as it contains no specific numbers..

4 Applicant's balance sheet (Applicant Exhibit 2) is legally insufficient to meet the requirements of 52 Pa. Code 41.14, as both the inability of Applicant to explain the figures, and the \$1.3 million proposed first-year loss do not meet the burden of financial fitness imposed by the regulation.

5 Applicant has shown no need as required by 52 Pa. Code 41.14(a)

6 Applicant has shown no propensity to act legally as per 52 Pa. Code 41.14

7 Applicant cannot meet any of the burdens imposed by 52 Pa. Code 41.14

PROPOSED RELIEF

WHEREFORE, Protestant Capital City Cab Service proposes that the present Application be Dismissed with Prejudice.

Date: 9/15/14

Respectfully submitted,

/s/Joseph T. Sucec

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties listed below via e-mail and/or first class mail, postage prepaid.

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