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September 15, 2014

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

Docket Nos. A-2014-2416127, Application of Rasier-PA, LLC  
and  
A-2014-2424608, Application of Rasier-PA, LLC

Dear Secretary Chiavetta:

Transmitted herewith for filing is Protestant J.B. Taxi LLC's Brief in the above-referenced proceedings.

Very truly yours,

/s/ electronically filed

David W. Donley  
Attorney for Protestant  
412.331.8998

DAVID W. DONLEY ATTORNEY AT LAW  
3361 STAFFORD STREET - PITTSBURGH PA 15204-1441  
412.331.8998 [DWDONLEY@CHASDONLEY.COM](mailto:DWDONLEY@CHASDONLEY.COM)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET A-2014-2416127  
APPLICATION OF RASIER-PA, LLC

DOCKET A-2014-2424608  
APPLICATION OF RASIER-PA, LLC

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PROTESTANT JB TAXI’s BRIEF

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## Statement of the Case

Rasier-PA LLC seeks to operate in experimental service as a regulated public utility providing a ride-sharing network service and submits for Commission approval two applications. One application is limited to service between points in Allegheny County; the other application extends to all points in the Commonwealth except points in nine enumerated counties. A restrictive amendment and stipulation have been filed which will further eliminate service in a tenth county and portions of an eleventh county. Following preliminary review and acceptance of the applications with the designation of “experimental,” notice was published in the Pennsylvania Bulletin. Numerous protests were filed, including that of J.B. Taxi LLC t/a County Taxi Cab. Additional matters related to Preliminary Objections, Exceptions and Appeals seeking Interlocutory Review have been concluded.

The parties have filed Prehearing Memoranda setting forth the issues to be resolved at the hearings, and by Interim Order entered July 31, 2014, the Commission determined that additional issues were relevant to the consideration of the applications. That order directed the parties to submit evidence on the issues enumerated in the July 31<sup>st</sup> Interim Order.

Hearings were convened at which Applicant offered the testimony of four witnesses on the issue of public need together with Applicant’s principal witness, Matthew Gore, who offered testimony and supporting exhibits on the business model and operations. Mr. Gore’s testimony includes a suggestion that a separate application for Emergency Temporary Authority filed at Docket 2429993, *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., for Emergency Temporary Authority to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA* more closely tracks the services proposed than do the original applications filed in these proceedings. Applicant also offered the testimony of H.G. Fuldner, its Director of Insurance and Risk Management.

During the course of the hearings, Applicant declined to provide the evidence it was required to provide under the Commission’s interim order. As a result of Applicant’s refusal the protestants have moved to dismiss the applications for failure to oblige the

Commission's order without just cause. The motion has been held in abeyance pending briefing.

Protestants (the medallion carriers, the partial-rights carriers and other certificated carriers operating in the eastern part of the Commonwealth) offered testimony from two witnesses focusing upon the regulatory requirements under which they are required to operate, the innovative services currently available to the public and their perception of the unfair competition they are currently facing and fear for the future. Those protestants as well as The Insurance Federation of Pennsylvania offered the testimony by insurance experts in opposition to Applicant's suggestion that its insurance arrangements will be adequate.

#### Summary of Argument

Protestants' motion for Summary Judgment made at the conclusion of Applicant's case in principle should be granted because Applicant has failed to sustain a *prima facie* case that it has the financial ability to provide the passenger transportation services proposed in the applications.

Alternatively, protestants' motion to dismiss the applications for failure to obey a Commission order without just cause should be granted because Applicant's refusal has prevented the development of the record and argument on the issue of Applicant's propensity to operate legally and safely.

In the alternative, the applications should be denied on their merits because the services proposed fail to recognize the requirements of the Public Utility Code which regulate public utilities providing passenger broker services as well as the corresponding requirements which regulate contract motor carriers. The self-styled description of "experimental" is not appropriate once the details of the proposed operations are examined, and they are in fact the operations of a passenger broker. The technology available to Applicant's drivers and customers does not excuse compliance with the Commission's safety and insurance regulations which are set forth for the purpose of protecting the traveling public. Applicant's business model which is premised upon so-called "surge pricing" and fares that are not disclosed to the Commission and available to the public in advance of the time they are assessed do not meet the minimum requirements of the Public Utility Code. That code requires that the Commission

approve the level of fares, the manner in which they are assessed, and all of the terms of service relevant to the services provided for those fares. As a result of Applicant's failure to demonstrate a public need and the capability to comply with the statutory requirements under which public utilities may provide service to the public, the applications should be denied.

#### Argument

##### I. The services proposed require a passenger broker's license.

Although they are incorrectly characterized by Applicant as experimental, the services proposed are those specifically described in the Public Utility Code as the operation of a passenger broker. Words should be given their plain meaning when construing a statute, and Applicant's reliance upon any contrary but unstated opinion by Applicant's management or that of its parent, Uber Technologies, Inc., should be rejected by Commission. The Public Utility Code provides,

**"Broker."** Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier 66 Pa. C.S. § 2501 (b).

Applicant will advertise the availability of its drivers' transportation services. Applicant, through a licensing arrangement with its parent disclaims that it is a transportation carrier. Should the application be approved, Applicant will disclaim any intention to provide transportation services.

THE COMPANY DOES NOT PROVIDE TRANSPORTATION SERVICES, AND THE COMPANY IS NOT A TRANSPORTATION CARRIER. IT IS UP TO THE THIRD PARTY TRANSPORTATION PROVIDER, DRIVER OR VEHICLE OPERATOR TO OFFER TRANSPORTATION SERVICES WHICH MAY BE SCHEDULED THROUGH USE OF THE APPLICATION OR SERVICE. THE COMPANY OFFERS INFORMATION AND A METHOD

TO OBTAIN SUCH THIRD PARTY TRANSPORTATION SERVICES, BUT DOES NOT AND DOES NOT INTEND TO PROVIDE TRANSPORTATION SERVICES OR ACT IN ANY WAY AS A TRANSPORTATION CARRIER, AND HAS NO RESPONSIBILITY OR LIABILITY FOR ANY TRANSPORTATION SERVICES PROVIDED TO YOU BY SUCH THIRD PARTIES. (Exhibit A JB Taxi LLC, page 1, third paragraph of Terms and Conditions – May 17, 2013.)

Although it disclaims any responsibility for the transportation services to be sold to passengers, Applicant will determine the amount of the fare which will be due and which will be collected. Applicant's drivers will not determine or collect fares.

Any fees that the Company may charge you for the Application or Service, are due immediately and are non-refundable. This no refund policy shall apply at all times regardless of your decision to terminate your usage, our decision to terminate your usage, disruption caused to our Application or Service either planned, accidental or intentional, or any reason whatsoever. The Company reserves the right to determine final prevailing pricing - Please note the pricing information published on the website may not reflect the prevailing pricing.

The Company, at its sole discretion, make promotional offers with different features and different rates to any of our customers. These promotional offers, unless made to you, shall have no bearing whatsoever on your offer or contract. The Company may change the fees for our Service or Application, as we deem necessary for our business. We encourage you to check back at our website periodically if you are interested about how we charge for the Service of Application. (Exhibit A JB Taxi LLC, page 6, Payment Terms)

These activities fall squarely within the statutory definition of a passenger broker operation under the Public Utility Code. Applicant will upon request estimate a fare for the passenger. For all trips Applicant will collect the fare and disburse a portion of it to the driver as compensation for the driver's services, the maintenance and use of the vehicle, and to advertise and promote the driver's services. See, for example the Terms and Conditions dated May 17, 2013 (Exhibit A JB Taxi LLC, page 7, Third Party Interactions, first and second paragraphs) and Applicant's tariff, Experimental Pa PUC No. 1 items 1.3 and 2.4 (Applicant's Exhibit 3 pages 4 and 5.

II. Applicant's drivers are contract motor carriers.

In the rhetoric of so-called "ride sharing networks," Applicant's drivers are referred to as "independent ride-sharing operators." In the context of Applicant's more formal contract with passengers, drivers are also called "third party transportation providers" or "vehicle operators." Contractually, Applicant cautions its customers as to a passenger's assumed risk in using the services proposed as one in which Applicant is to have no responsibility or control.

THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, SAFETY, TIMELINESS, QUALITY, SUITABILITY OR AVAILABILITY OF ANY SERVICES, PRODUCTS OR GOODS OBTAINED BY THIRD PARTIES THROUGH THE USE OF THE SERVICE OR APPLICATION. YOU ACKNOWLEDGE AND AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE APPLICATION AND SERVICE, AND ANY THIRD PARTY SERVICES OR PRODUCTS REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY LAW (Exhibit A JB Taxi LLC, page 8, bottom of first paragraph labeled on the prior page as Disclaimer of Warranties.)

Elsewhere , customers are also advised with respect to Applicant's drivers that

THE QUALITY OF THE TRANSPORTATION SERVICES SCHEDULED THROUGH THE USE OF THE SERVICE OR APPLICATION IS ENTIRELY THE RESPONSIBILITY OF THE THIRD PARTY PROVIDER WHO ULTIMATELY PROVIDES SUCH TRANSPORTATION SERVICES TO YOU. YOU UNDERSTAND, THEREFORE, THAT BY USING THE APPLICATION AND THE SERVICE, YOU MAY BE EXPOSED TO TRANSPORTATION THAT IS POTENTIALLY DANGEROUS, OFFENSIVE, HARMFUL TO MINORS, UNSAFE OR OTHERWISE OBJECTIONABLE, AND THAT YOU USE THE APPLICATION AND THE SERVICE AT YOUR OWN RISK. Exhibit A JB Taxi LLC, page 9, bottom of second paragraph labeled on the prior page as Limitation of Liability.)

The driver's independence under which Applicant proposes its drivers will operate establishes clearly that the transportation services made available to Applicant and its customers by Applicant's drivers are those of a contract carrier within the meaning of the Public Utility Code.

The term "contract carrier by motor vehicle" includes any person or corporation who or which provides or furnishes 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, or who or which provides or furnishes, with or without drivers, any motor vehicle for such transportation, or for use in such transportation, other than as a common carrier by motor vehicle. 66 Pa. C.S. § 2501 (b)(1).

The exclusions set forth at 66 Pa. C.S. § 2501 (b)(2) as to what constitutes contract carriage are not pertinent to the service proposed by Applicant.

In its business arrangements with its drivers, Applicant does not propose to limit its pool of drivers to those who have complied with the Public Utility Code's requirements for motor contract carriers. So to Applicant fails to propose any restriction as to the equipment to be provided as limited to that driven or furnished by authorized contract carriers. Protestant believes that Applicant's lax oversight into compliance with the Public Utility Code's requirements will facilitate a business model designed to minimize supervision of drivers, investment in the bricks-and-mortar and rolling stock required to sustain public utility services.

III. The services proposed are not ride sharing.

The legislature has addressed the concept of shared rides arranged for or provided by persons not in the transportation business as:

Ridesharing arrangement defined

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.

(3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

55 P.S. § 695.1

If the service proposed by Applicant is ride sharing, the applications must be dismissed for want of Commission jurisdiction over ride-sharing arrangements. 55 P.S. § 695.2

IV. Technology does not insulate its users from the requirements of law.

Applicant's parent, Uber Technologies, Inc., disclaims any purpose to provide passenger transportation service to users of its smartphone application. Yet Applicant's proposed service will not be provided by any other means or through any other public utility resource save that software. Applicant seizes this technology arrangement, standing alone, as the basis to enter the western Pennsylvania market without first adhering to the requirements of the Public Utility Code.

Applicant certifies at page 9 of its application and again on July 2, 2014, at Page 13 of its requested docketed at A-2014-2432304, *Application of Lyft, Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA*, Order entered July 24, 2014, that "...it is not currently engaged in unauthorized intrastate transportation for compensation between points in Pennsylvania and will not engage in such transportation unless and until such authorization is received from the Commission." At a contemporaneous time, Applicant's parent has elected to organize, own and control a separate business entity, Rasier-LLC, for the purposes of entering the western Pennsylvania passenger transportation market without the benefit of advance approval. Applicant's parent also has declined to present a witness or testimony that might shed any public light on its contention that the proposed services may be provided without Commission authority. See Docket No. P-2014-2426846, *Petition of the Bureau of Investigation and Enforcement (I&E) for Interim Emergency Relief*, Order entered July 24, 2014, at page 6.

Protestant understands that these related proceedings are not to be resolved in the context of this proceeding, but naturally Protestant is vitally interested in the outcome. That outcome will likely provide the point of reference for "experimental" operators in areas of the state beyond Allegheny County who may wish to argue that technology generates the basis for a significant departure from the Public Utility Code and the conventional requirement that new entrants may serve customers only after receiving Commission approval of their service proposals.

V. Applicant has not demonstrated the proposed service is consistent with the public's interest.

The Commission's policy in evaluating evidence offered in passenger application proceedings is set forth at 52 Pa. Code § 41.14. Applicant fails to address several essential elements set forth in that policy. The record contains no evidence that might support a finding that Applicant has the financial ability to support the service proposed. Applicant ignores the Commission's policy, and as a result, has failed to offer a *prima facie* case upon which its application might be adjudicated. See 52 Pa. Code § 41.14(b).

In the important aspect of establishing a public need Applicant relies principally upon public opinion drawn from a very narrow yet vocal segment of the public dissatisfied with certificated carriers serving Pittsburgh. The record does not support any finding beyond the needs of some specially-equipped, tech-savvy and risk tolerant Pittsburgh users.

Protestant also challenges the very generalized finding with respect to mobile applications suggesting that they may result in a "wider ranging, faster and more user-friendly scheduling of transportation services" when compared to more traditional means of scheduling service. This finding should be carefully evaluated in the context of Applicant's proposed service. It should not be brought forward from prior proceedings which have not afforded the opportunity to develop a record on this question. The characterization of "wider ranging, faster and more user-friendly" may be traced to the recent decision involving experimental service proposed for Allegheny County customers. Docket A-2014-2410269, *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*, Order entered May 20, 2014, at page 6. At the time, Yellow Cab had as yet to unveil publicly its mobile application.

The finding and characterization, "wider ranging, faster and more user-friendly" is next repeated with reference to Applicant's proposed service in Docket No. A-2014-2429993 *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., For Emergency Temporary Authority to Operate An Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Order entered July 24, 2014, at page 13 as well as parroted in the contemporaneous decision in Docket No. A-2014-2432304 *Application of Lyft*,

*Inc., For Emergency Temporary Authority to Operate An Experimental Transportation Network Service Between Points in Allegheny County, PA, Order entered July 24, 2014, pages 13-14.*

The generalized finding appears to exclude the convenience of a large segment of the traveling public. It would be arbitrary, for example, to find that a service that does not permit a patron to schedule a trip to a 8:00 AM doctor's appointment in the afternoon or evening prior to that appointment. Other considerations important to passengers should also be examined, including the needs of

- patrons who do not have access to the required technology at the time service is needed,
- patrons who do not wish to use credit cards and do not wish to disclose sensitive information identifying their checking accounts,
- patrons who have not received a favorable passenger profile in Applicant's data base because of disagreements with a driver,
- patrons who require handicap accessible vehicles.

More critically, the characterization of "user-friendly" appears to discount substantially Applicant's reliance upon the technology, that is, the mobile application, to force casual, occasional, or careless patrons into an onerous contract extending 12 pages in length if a printed version would be available to the customer. See Exhibit A JB Taxi LLC. Protestant argues that "user-friendly" is not be an appropriate characterization for services to be scheduled only upon a consumer's consent to the fine-print that accompanies the technology.

The availability of Applicant's services, if authorized, will bring a substantially unfriendly set of terms and conditions to consumers of passenger transportation services. Pennsylvania consumers purchasing a wide range of public services other than those subject to Commission oversight have protections from contracts such as that here proposed by Applicant as a condition of using its service. The legislature may have intended the Commission would play a role in protecting consumers. See the Plain Language Consumer Contract Act at Section 2204,

#### § 2204. Application of act and interpretation

(a) General rule.--This act applies to all contracts that are made, solicited or intended to be performed in this Commonwealth after the effective date of this

act.

(b) Exclusions.--This act does not apply to the following:

...

(7) Contracts subject to examination or other supervision by the Pennsylvania Public Utility Commission or by the Federal Energy Regulatory Commission.

73 P.S. § 2204

VI. Unintended results are likely to follow in many locations where unfair competition is encouraged.

The Commission should reject a business model which allows one public utility premised upon surge-pricing to compete for customers with other public utilities as to which surge pricing has been prohibited because it is not in the public's interest. The Public Utility Code requires Commission oversight of Applicant's fares and related terms of Applicant's service affecting those fares. They must be found in advance to be just and reasonable. 66 Pa.C.S. §1301 *et seq.*

Applicant proposes to provide a public utility service without publicly disclosing its fares in the manner required by law. Experimental Pa. P.U.C. No. 1, supporting Applicant's operations under emergency temporary authority fails to meet the minimum requirements for public disclosure. See Applicant's Exhibit 3. Section 1302 of the Public Utility Code requires,

... every public utility shall file with the commission, within such time and in such form as the commission may designate, tariffs showing all rates established by it and collected or enforced, or to be collected or enforced. 66 Pa.C.S. §1302.

Applicant's Experimental Pa. P.U.C. No.1 does not allow the Commission or the public to estimate or determine the fare to be applied for any trip Applicant proposes to provide. There are no rates in the publication. (See Applicant's Exhibit 3, pages 4 and 5.)

Protestant and protestant's competitors are each required to comply with the disclosure and subject to Commission oversight in advance of the time fares are published. 52 Pa.Code §23.11. Additionally, the Commission has found that the public's interest requires passenger transportation providers with which Applicant now proposes to compete to conform

their practices related to the level of fares and the circumstances in which that level may be adjusted. The regulatory scheme includes public disclosure as well as the opportunity for Commission oversight in a very specific manner, including

- public notice in advance of changes in fares, 52 Pa.Code§ 23.41,
- advance approval of fare changes, 52 Pa.Code§ 23.42,
- public notice of proposals affecting fares, 52 Pa.Code§§ 23.62 and 23.63, and
- restrictions on reducing fares based upon factors such as supply and demand, 52 Pa.Code§ 23.71.

Additionally the Public Utility Code may prohibit Applicant from refusing to accept currency as payment for Applicant's tariff charges because that prohibition would constitute an unreasonable disadvantage to a large segment of the traveling public. 66 Pa. C.S. § 1304.

With the past year the Commission has determined specifically with respect to Allegheny County users of on-demand transportation that the public's interest does not permit an increase in current fare levels in the case of the county's principal call-and-demand providers. Applicant's competitors will not enjoy the fare flexibility implemented under Experimental Pa. P.U.C. No. 1. See Docket R-2013-2379460, *Pennsylvania Public Utility Commission v. Cranberry Taxi, Inc. d/b/a Veterans Taxi*, Order entered February 20, 2014, denying a proposed fare increase filed February 13, 2013, and pending Commission evaluation under the public-interest standard for over a year. The Commission has also found that the public's interest will not be served where current Allegheny County providers do not abide by specific yet unstated requirements in recapturing cost increases. See R-2013-2365656, *Pennsylvania Public Utility Commission v. Yellow Cab Company of Pittsburgh*, Order entered September 23, 2013. There, the Commission determined, pursuant to 66 Pa.C.S. §1301, that it is required to ensure that all rates charged by a public utility are just and reasonable, and that the formula relied upon by the carrier to address the expenses associated with fuel was not unacceptable under the public-interest requirement of the Public Utility Code.

Beyond Allegheny County considerations, the Commission has also found that the public's interest requires the Commission routinely to review and to approve all fare increases on the basis of the public utility's operating revenues and expenses. These requirements are in stark contrast to the flexibility that Applicant proposes to enjoy. With respect to existing providers the Commission has found the public's interest necessarily involves a requirement to justify fare adjustments; delay is typically experienced. Rate increases considered in calendar year 2014 for existing providers operating outside of Allegheny County average 186 days of Commission review before the public-test is satisfied.<sup>1</sup>

With respect to surge-pricing, it is also important to consider that the Commission lacks jurisdiction to determine retroactively that the level of a fare collected after it is published does not meet the just and reasonable standard. Because of this limitation, consumers will remain unprotected, and fare refunds will not be available in the case of surge pricing that rises to a level beyond that which would be adjudicated as just and reasonable. No remedy would be available in the event of price gouging.

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<sup>1</sup>Docket R-2013-2355682 *Pennsylvania Public Utility Commission v. Ernest S. Lantz*, Proposed increase received March 25, 2013, Order entered approving increase February 20, 2014; public interest analysis 332 days.

Docket R-2013-2378623 *Pennsylvania Public Utility Commission v. Corry Cab Company*, filed August 8, 2013, Order entered February 20, 2014; public interest analysis 196 days.

Docket R-2013-2398500 *Pennsylvania Public Utility Commission v. Noga Ambulance Service, Inc.*, Filed December 10, 2013, Order entered April 23, 2014; public interest analysis 134 days.

Docket Docket R-2014-2403135 *Pennsylvania Public Utility Commission v. Delbo Associates, Inc., t/a Shamokin Yellow Cab*, filed January 28, 2014, Order entered April 23, 2014; public interest analysis 85 days.

Docket R-2014-2403141, *Pennsylvania Public Utility Commission v. Black Diamond Cab Co., Inc.*, filed 1-28-2014, Order entered April 23, 2014; public interest analysis 85 days.

*footnote continued on next page*

Docket R-2013-2391690, *Pennsylvania Public Utility Commission v. Premium Taxi, LLC*, Filed 11-7-2013, Order entered May 22, 2014, denying any fare adjustment until the carrier is in compliance with the Commission's regulations; public interest analysis 196 days.

Docket R-2013-2367228 *Pennsylvania Public Utility Commission v. Corry Ambulance Service, Inc.*, filed June 5, 2013, Order entered June 19, 2014; public interest analysis 379 days.

Docket R-2013-2394430, *Pennsylvania Public Utility Commission v. Choice Cab Company*, filed 11/25/2013, Order Entered June 19, 2014; public interest analysis 206 days.

Docket R-2014-2428255, *Pennsylvania Public Utility Commission v. MTR Transportation, Inc., t/a K-Cab Co.*, filed June 18, 2014, Order entered August 21, 2014; public interest analysis 64 days.

Of particular concern to Protestant is Applicant's apparent intention to enter western Pennsylvania with a flourish of predatory pricing practices designed to attract customer's away from existing providers. These practice include free transportation, vouchers for substantially discounted fares, and an overall business model to keep revenues substantially below the level required to break even. See Applicant's Exhibit 2 suggesting a purpose to incur substantial revenue shortfalls beginning in August 2014. The legislature has set forth a regulatory requirement that the Commission include among its considerations in rate matters policies which will "...promote safe, adequate, economical, and efficient service by common carriers by motor vehicle and forwarders, and just and reasonable rates therefor, without unjust discrimination, and unfair or destructive practices." 66 Pa.C.S.2501.

#### Proposed Findings of Fact

##### Docket A-2014-2416127 and Allegheny County

1. Applicant, Rasier-PA LLC, is a Delaware limited liability company registered to do business in Pennsylvania as a foreign limited liability company. (Application.)
2. Applicant seeks authorization under the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, to operate as a commercial business pursuant to an agreement with its parent company, Uber Technologies, Inc. (Application.)
3. Uber Technologies, Inc. is a software company that licenses a smartphone application. (Answer of Uber Technologies, Inc. to Petition for Interim Emergency Relief filed at Docket No. P-2014-2426846, *Petition of the Bureau of Investigation and Enforcement (I&E) for Interim Emergency Relief.*)
4. Applicant consistently refers to the services it wishes to provide as an experimental ride-sharing network service. (Application, Reply Exceptions of Rasier-PA LLC to Exceptions of JB Taxi, Answer of Uber Technologies, Inc. to Petition for Interim Emergency Relief filed at Docket No. P-2014-2426846, *Petition of the Bureau of Investigation and Enforcement (I&E) for Interim Emergency Relief* at footnote 2, for example.
5. Applicant has no means independent of its parent company to provide the services to be offered to passengers wishing to use on-demand motor carrier service. (Application,

page 3, Applicant's Exhibit 1, page 9; Exhibit A JB Taxi LLC, page 2 – Representations and Warranties, second paragraph; Applicant's Exhibit 3, page 4-item 1.1.)

6. Uber Technologies, Inc. will control the terms of service under which Applicant's services are to be provided to passengers. (Exhibit A JB Taxi LLC, page 1 – Terms and Conditions, first and second paragraphs.)
7. Applicant will not control the level of its fares to be charged for its services, and Uber Technologies, Inc. alone will control the fares and all related fees to be charged to passengers. (Exhibit A JB Taxi LLC, page 6 – Payment Terms, first and second paragraphs; Applicant's Exhibit 3, page 4 item 1.1. and page 5 items 2.1 through 2.3 and 2.5.)
8. Prior to any trip passengers are required to consent to all terms, conditions, fares and fees of a binding contract set forth in a 10,200 word agreement consisting of over 800 lines of text. (Exhibit A JB Taxi LLC, pages 1 through 12.)
9. Applicant proposes to provide public utility services under terms, conditions and at costs to the consumer that may be changed by an unregulated entity, namely, Uber Technologies, Inc., without prior notice, review or approval of the Commission. (Exhibit A JB Taxi LLC, page 1, Terms and Conditions second paragraph.)
10. Any and all rights, obligations and remedies arising under the terms and conditions of the binding contract are to be subject to the provisions of the contract language appearing at Page 10, headed "Assignment." (Exhibit A JB Taxi LLC, page 10, Assignment.)
11. Passengers are to be transported in vehicles operated by a third-party transportation provider, styled an "independent ride sharing operator" by Applicant, without any requirement that any person hold a Certificate of Public Convenience conforming to Section 2502(b)(1) of the Public Utility Code, 66 Pa. C.S. §2502(b)(1). (Application pages 6 and 7; Applicant's Exhibit 1, page 9; Exhibit A JB Taxi LLC, page 1 Terms and Conditions third paragraph.)

12. Passenger fares will be collected by Applicant or for Applicant's benefit but will not be collected by the independent ride sharing operator (Exhibit A JB Taxi LLC, page 6, Payment Terms first paragraph.)
13. Each independent ride-sharing operator will be paid by Applicant or Uber Technologies, Inc. for Applicant's account for services he or she provides and for use of the transport vehicle. (Applicant's Exhibit 3, page 4, item 1.3; Exhibit A JB Taxi LLC, page 6, Payment Terms first paragraph.)

Docket A-2014-2424608 statewide with exceptions

1. Applicant, Rasier-PA LLC, is a Delaware limited liability company registered to do business in Pennsylvania as a foreign limited liability company. (Application.)
2. Applicant seeks authorization under the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, to operate as a commercial business pursuant to an agreement with its parent company, Uber Technologies, Inc. (Application.)
3. Uber Technologies, Inc. is a software company that licenses a smartphone application. (Answer of Uber Technologies, Inc. to Petition for Interim Emergency Relief filed at Docket No. P-2014-2426846, *Petition of the Bureau of Investigation and Enforcement (I&E) for Interim Emergency Relief.*)
4. Applicant consistently refers to the services it wishes to provide as an experimental ride-sharing network service. (Application, Preliminary Objections to the Protest of JB Taxi LLC, t/a County Taxi Cab, Applicant's Exhibit No. 1,
5. Applicant has no means independent of its parent company to provide the services to be offered to passengers wishing to use on-demand motor carrier service. (Application, page 3, Applicant's Exhibit 1, page 9; Exhibit A JB Taxi LLC, page 2 – Representations and Warranties, second paragraph; Applicant's Exhibit 3, page 4-item 1.1.)
6. Applicant will not control the level of its fares to be charged for its services, and Uber Technologies, Inc. alone will control the fares and all related fees to be charged to passengers. (Exhibit A JB Taxi LLC, page 6 – Payment Terms, first and second

paragraphs; Applicant's Exhibit 3, page 4 item 1.1. and page 5 items 2.1 through 2.3 and 2.5.)

7. Prior to any trip passengers are required to consent to all terms, conditions, fares and fees of a binding contract set forth in a 5,400 word agreement consisting of over 11 pages of single-spaced text. (Exhibit A JB Taxi LLC, pages 1 through 12.)
8. Applicant proposes to provide public utility services under terms, conditions and at costs to the consumer that may be changed by an unregulated entity, namely, Uber Technologies, Inc., without prior notice, review or approval of the Commission. (Exhibit A JB Taxi LLC, page 1, Terms and Conditions second paragraph.)
9. Any and all rights, obligations and remedies arising under the terms and conditions of the binding contract are to be subject to the provisions of the contract language appearing at Page 10, headed "Assignment." (Exhibit A JB Taxi LLC, page 10, Assignment.)
10. Passengers are to be transported in vehicles operated by a third-party transportation provider, styled an "independent ride sharing operator" by Applicant, without any requirement that any person hold a Certificate of Public Convenience conforming to Section 2502(b)(1) of the Public Utility Code, 66 Pa. C.S. §2502(b)(1). (Application pages 6 and 7; Applicant's Exhibit 1, page 9; Exhibit A JB Taxi LLC, page 1 Terms and Conditions third paragraph.)
11. Passenger fares will be collected by Applicant or for Applicant's benefit but will not be collected by the independent ride sharing operator (Exhibit A JB Taxi LLC, page 6, Payment Terms first paragraph.)
12. Each independent ride-sharing operator will be paid by Applicant or Uber Technologies, Inc. for Applicant's account for services he or she provides and for use of the transport vehicle. (Applicant's Exhibit 3, page 4, item 1.3; Exhibit A JB Taxi LLC, page 6, Payment Terms first paragraph.)

Proposed Conclusions of Law

In Dockets A-2014-2416127 and A-2014-2424608

1. The Commission has jurisdiction over the subject matter, the Applicant, the activities of Applicant's parent company and the protestants holding operating authorities issued by the Commission.
2. The application is properly before the Commission following the oral hearings and submission of briefs.
3. Protestant's Motion for Summary Judgment should be granted because the Applicant has failed to demonstrate a *prima facie* case that it has the financial ability to provide the services proposed.

In the alternative,

4. The application should be dismissed for Applicant's failure without good cause to obey a Commission order directing the submission of evidence at the time of the hearings.

In the alternative,

5. At the time of the hearing, Applicant was not a regulated business and was required to demonstrate a technical and financial ability to provide the proposed service.
6. Applicant failed to produce any probative evidence demonstrating its financial ability, and thereby, failed to sustain a *prima facie* case upon which the Commission might approve the application.
7. The record demonstrates that Applicant's business is not managed or controlled independently from its parent, Uber Technologies, Inc., and that Applicant will rely exclusively upon the resources of that parent and independent contractors to provide all of the facilities to be used in provided the proposed services.
8. Applicant's parent has demonstrated a contumacious refusal to abide by the requirements of the Public Utility Code and Commission orders, and accordingly, is likely to manage and control Applicant without a requisite condition to provide service in the public's interest.
9. Applicant's exclusive means of providing the services proposed would rely upon independent contractors who are not required by Applicant to hold Certificates of Public Convenience, a requirement under the Public Utility Code.

10. The record fails to show the experimental services proposed would serve a useful public purpose.

Proposed Ordering Paragraphs

It is ordered: That Protestants' Motion for Summary Judgment is granted and the application of Rasier-PA LLC for authority to operate in experimental service is denied.

Conclusion

For the foregoing reasons, Protestant requests that applications seeking authority to operate in experimental service be denied and that all relief sought by Applicant be denied.

Respectfully submitted,

*electronically filed*

David W. Donley  
Attorney for Protestant  
3361 Stafford Street  
Pittsburgh PA 15204-1441  
(412) 331-8998  
Pa ID 19727

Certificate of Service

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

By first-class mail, postage prepaid

Karen O. Moury, Esquire  
Buchanan Ingersoll & Rooney PC  
409 North Second Street, Suite 500  
Harrisburg PA 17101-1357

Justine Pate, Esquire  
620 S 13<sup>th</sup> Street  
Harrisburg PA 17104

Michael S. Henry, Esquire  
Michael S. Henry LLC  
2336 South Broad Street  
Philadelphia PA 19145

Joseph T Sucec, Esquire  
325 Peach Glen-Idaville Road  
Gardners PA 17324

Lloyd R. Persun, Esquire  
Persun and Heim, PC  
P.O Box 659  
Mechanicsburg PA 17055

By email

Admin. Law Judge Mary D. Long  
Pennsylvania Public Utility Commission  
Piatt Place - Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Admin. Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Piatt Place - Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Dated this 15th day of September, 2014

*electronically filed*

David W. Donley  
Attorney for Protestants  
3361 Stafford Street  
Pittsburgh PA 15204-1441  
(412) 331-8998  
Pa ID 19727