

**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 : Docket No. A-2014-2424608
Ride-Sharing Network Service Between Points in :
the Commonwealth of Pennsylvania, Excluding :
Designated Counties :

JOINT RESPONSIVE BRIEF OF PROTESTANTS TO APPLICANT'S BRIEF OPPOSING

MOTION TO DISMISS APPLICATION

AND NOW COMES, Joint Protestants, Keystone Cab Service, Inc., EZ Taxi, LLC, Good Cab, LLC and United Cab, LLC, by and through their attorney, Justine L. Pate, Esq. and submit this Responsive Brief to Applicants Brief Opposing Motion to Dismiss Application.

INTRODUCTION AND STATEMENT OF THE CASE

The sole purpose of this brief is to respond to Applicant's brief in opposition to Protestant's Motion to Dismiss. Evidentiary hearings were held on August 18, 2014 and August 19, 2014 in Pittsburgh. On July 28, 2014 the Commission issued a Secretarial Letter directing Applicant to provide:

(d) The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:

(e) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the

Complaint against Uber);

(f) From the receipt of the cease and desist letter from the Commission's Bureau of Technical Utility Services dated July 6, 2012 to June 5, 2014;

(g) From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective);
and

(h) From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.

(i) Should there be a finding that Uber's conduct in any one or all of the periods in question (1) above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.

(j) Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negated the need for the proposed service and/or the fitness of the Applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

The Administrative Law Judges (ALJs) issued an *Interim Order* on July 31, 2014 directing the Applicant to present evidence on the same points as the Secretarial Letter, and made it clear that the information requested is relevant to the consideration of the application. The Applicant sought no protective order for the information requested.

When asked the aforementioned questions at the hearing, Counsel for Rasier-PA, LLC instructed the witness, Matthew Gore, to not answer the questions. Administrative Judge Long stated, "Let the record reflect that Applicant does not intend to comply with the July 31st order." N.T. (Cross Examination of Matthew Gore) 8/18/14, p. 252.

SUMMARY OF ARGUMENT

Rasier-PA, LLC (Applicant) has a demonstrative history of non compliance with Commission orders. Rasier, LLC, Rasier-PA, LLCs sister company, illegally provided services while a Cease and Desist Order was in place by the Commission.

Rasier-PA, LLC took a similar approach to it's sister company's history at the hearings held on August 18 and August 19 when it refused to provide answers to a Commission Order directing Applicant to provide trip-data. Based on the refusal to answer the questions in the Order, Protestant made a motion to dismiss which is the subject matter of this brief. Protestants argued that the lack of answers to the questions would result in an incomplete record and such refusal is an open defiance of a Court Order. Protestants have been disadvantaged and prejudiced by Applicant's refusal to provide answers, as Protestants are now left with an incomplete record. Moreover, dismissal of the Application without hearing the merits is appropriate because Applicant has now been clear that it does not intend to comply with Commission orders.

ARGUMENT

Applicant argued that it would not be answering the questions for three reasons: (1) the information is a trade secret, (2) the 5th Amendment of the United States Constitution protects such disclosure and (3) the data requested is irrelevant, and its probative value is outweighed by the prejudice to the Applicant of producing the evidence.

The information sought is not a trade secret. The Restatement of Torts, Section 757(b) defines a

trade secret as, “any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. *See*, Restatement of Torts, Section 757, Comment (b). Comment (b) further explains, “[A trade secret] differs from other secret information in a business (see s 759) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business.”

The information being sought is not a process or device for continuous use in the operation of the business. The Protestants are not asking that Rasier-PA, LLC disclose how it gathered the information, but rather the end result, the actual numbers.

The argument posed by Applicant that the disclosure of such information would be harmful to business is irrelevant, as is the argument that the information is proprietary. “Proprietary” is defined by the Merriam-Webster dictionary as, “something that is used, produced, or marketed under exclusive legal right of the inventor or maker”.¹ The information requested is not used, produced, or marketed. It has been gathered and is available to disclose. Applicant just does not want to disclose it.

Since the information requested is neither a trade secret nor proprietary information, Applicant's assertion of the Fifth and Fourteenth Amendment protections is unwarranted. As Applicant says in its Brief Opposing the Motion to Dismiss, trade secrets have been recognized as property under the Fifth Amendment. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984). However, the information is not a trade secret, so Applicant's argument does not apply.

Moreover, the Applicant's assertion that it is fearful the information will become available to the

¹ <http://www.merriam-webster.com/dictionary/proprietary>

public through Pennsylvania's Right to Know Law is also irrelevant. Applicant claims that it should enjoy the exemption afforded to a record that constitutes or reveals a trade secret or confidential proprietary information. Again, as this information is neither a trade secret nor proprietary, Applicant is incorrectly claiming an exemption.

Applicant also argues that it should enjoy the protection of a record relating to a noncriminal investigation, however, such protection would need to have been sought prior to the hearing. Applicant had insisted that the parties move forward with a severely truncated schedule, and Applicant opposed all continuances sought by counsel for the Protestants. Surely, Applicant had ample time to seek some kind of order of protection in the same time Protestants had to prepare for the case.

Applicant also relies on the Fifth Amendment of the United States Constitution. However, Applicant's reliance is misguided. Applicant openly admitted that Rasier, LLC continued providing services after the issuance of a Cease and Desist Order by the Commission. Applicant had already admitted to the violation that Applicant is seeking protection from.

However, the Commission will find that while the Applicant claims it does not operate in the Commonwealth, the Applicant is claiming the Fifth Amendment to protect it against possible illegal behavior. Applicant claims it is not currently, nor has it previously operated in the Commonwealth, the Applicant testified that the Applicant's sister company, Rasier, LLC has operated in the Commonwealth, therefore the protection of the 5th Amendment is not available to Applicant, since the trips were not provided by the Applicant, but rather by the Applicant's sister company.

The Applicant is simply seeking again to circumvent the authority of the Commission. The Applicant testified that it is not operating in the Commonwealth, making a clear distinction between Applicant: Raiser-PA, LLC and Rasier, LLC. However, Applicant is seeking the Fifth Amendment protection for actions of Rasier, LLC. The Applicant is Rasier-PA, LLC when it is beneficial to the Applicant, (ie, when it can say that it is not operating in the Commonwealth), however, the Applicant is

both Rasier-PA, LLC and Rasier, LLC when it is seeking to not comply with a Court Order.

Applicant also argues in its brief that the trip date is irrelevant to the pending application. Applicant argues that because Applicant admitted to providing services despite a cease and desist order, that the record is adequate for Protestant's to argue that Rasier-PA, LLC lacks the propensity to operate legally.

Applicant is therefore suggesting to the ALJ's that the Applicant can somehow arbitrarily determine how much information is enough information for Protestant's to have. The ALJs themselves have determined that this information is relevant to the instant Application. The record is therefore incomplete in the instant matter. Applicant would have the Commission believe that just because Applicant does not want its Competitors to have this information, Applicant should be excused from having to provide it.

Applicant also argues in its brief that since the parties did not request the information prior to the hearing, it was not necessary for Applicant to provide the information at the hearing. The argument almost seems inappropriate given that Applicant objected to each and every request for a continuance made by Protestants.

CONCLUSION

The ALJ's should grant Protestant's Motion to Dismiss the Application in its entirety. A Motion to Dismiss is appropriate because Applicant has made it clear Applicant does not take the Orders of the Commission seriously, and will only provide the information Applicant believes to be relevant. The behavior of the Applicant at the proceedings demonstrates a clear disregard for Commission authority. The record in the matter is incomplete and the Applicant has made it clear that it does not intend for the parties in this matter to have a complete record.

Respectfully submitted,

Justine L. Pate, Esq.

Pa Bar ID No 311904

Attorney for Keystone Cab

Service, Inc., EZ Taxi, LLC, United Cab, LLC and Good Cab, LLC

Dated: 9/17/14

**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 : Docket No. 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.

Via E-Mail and/or First-Class Mail

Mary D Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
malong@pa.gov

Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, PA 1522
jeffwatson@pa.gov

David W. Donley, Esq.
3361 Stafford St.
Pittsburgh, PA 15204
Michael S. Henry, Esq.
Michael S. Henry LLC
2336 S. Broad St
Philadelphia, PA 19145
mshenry@mshenrylaw.com

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

Karen Moury, Esq
409 North Second Street, Suite 500
Harrisburg, PA 17101

9/17/14

_____/s/_____

Justine L. Pate, Esq.