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October 14, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval to Operate an Experimental Ride-Sharing Network Service Between Points in the Commonwealth of Pennsylvania, Excluding Designated Counties
Docket No. A-2014-2424608

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing the Exceptions of Rasier-PA LLC to Recommended Decision in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,



Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing :
Approval to Operate an Experimental : Docket No. A-2014-2424608
Ride-Sharing Network Service Between Points in :
the Commonwealth of Pennsylvania Excluding :
Designated Counties :

**EXCEPTIONS OF RASIER PA LLC
TO RECOMMENDED DECISION**

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Dated: October 14, 2014

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I. INTRODUCTION

By these Exceptions, Rasier-PA LLC (“Rasier-PA), a wholly-owned subsidiary of Uber Technologies, Inc. (“UTP” or “Uber”) urges the Commission to reverse the Recommended Decision (“R.D.”) issued by the Administrative Law Judges (“ALJs”) on September 25, 2014. The R.D. completely ignores the critical need for the ridesharing services proposed by Rasier-PA, and erroneously concludes that Rasier-PA’s evidence related to driver integrity, vehicle safety and liability insurance was insufficient to demonstrate that Rasier-PA is fit to provide the proposed service. Rasier-PA incorporates its Main Brief (“M.B.”) filed on September 15, 2014 herein by reference.

Based on the compelling evidence introduced by Rasier-PA of the public need for ridesharing services and its fitness to provide these services throughout the Commonwealth, the Commission should approve the pending application so that these services can be provided on an experimental basis for a period of up to two years. Approval of this application will allow the riding public throughout Pennsylvania to enjoy the benefits of ridesharing that are now limited to Allegheny County. Approval will also allow operators to start and expand their small businesses, thereby contributing to Pennsylvania’s economic growth.

Rasier-PA proposes ridesharing network services that would fill significant gaps in the transportation infrastructure in Pennsylvania, thereby addressing the unmet needs of citizens throughout the State. For example, a Pennsylvania rider on disability who recently used the Uber smartphone application in another part of the country, testified to the unmet need for such a service in Wilke-Barre/Scranton:

Uber if used in more small towns where I’m from in the Wilkes-Barre/Scranton area would be very helpful to multiple people, because right now the only transportation I am able to use is buses and shared ride programs, and it takes about two hours to get to a doctor’s appointment that’s 20 minutes away. So I’m spending a lot of time and a lot of stress and anxiety to get to a doctor’s

appointment that I have maybe like once or twice a week where with Uber, it would take 15, 20 minutes tops to get there and back.¹

Additionally, Brian Bashin, Chief Executive Officer for Lighthouse for the Blind, testified that for visually impaired individuals:

This is not a discretionary item or just might be nice item. This is something that some of use every day to get to work, to do shopping, to visit our family, that kind of thing. So it is not just something that's superficial. It will be the heart and soul of how blind and visually impaired people get around and how baby boomers who are not going to stay at home will decide on having options later on when they can't drive.²

Mr. Bashin's organization assists visually impaired individuals travel independently, and in the twenty years he has devoted to this cause, he has not seen any one thing so significantly impact that goal as being able to summon a ride "when you want, to show up when you want, to do it so safely and a little cheaper than it has been."³

Indeed, the Commission has recognized that the use of an App-based technology to arrange motor carrier passenger transportation services allows for "a wider ranging, faster and more user friendly scheduling" of needed rides. *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order adopted on May 22, 2014 ("Yellow Cab Order"). In a Joint Statement accompanying the *Yellow Cab Order*, Commissioner Witmer and Commissioner Brown described ridesharing as having "the potential to revolutionize the transportation market and provide customers with more options for travel throughout Pennsylvania" and expressed confidence that the market for ridesharing "will grow and thrive in Pennsylvania and provide great benefits to customers."⁴

¹ N.T. 42-43.

² N.T. 165.

³ N.T. 165.

⁴ Joint Statement at 1-2.

Among the benefits that have been identified by Rasier-PA when ridesharing enters new markets include declines in DUI rates and wait times for rides, especially in ignored and underserved neighborhoods. Importantly, the availability of ridesharing gives the consumer a choice in the way they arrange their transportation and enables them to opt for a safe and easy cashless transaction that provides a quick and reliable estimated arrival time and after the completion of the ride solicits the rider's feedback about the quality of the vehicle and the service provided by the operator.⁵

Currently, Rasier-PA is providing ridesharing between points in Allegheny County pursuant to a grant of emergency temporary authority by the Commission. *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, Pennsylvania*, Docket No. A-2014-2429993 (July 24, 2014) (“*ETA Order*”). Although the Commission's findings in the *ETA Order* were limited to Allegheny County from the standpoint of immediate need for the proposed service, the Commission wisely recognized that the introduction of a new App-based transportation service provides consumers with another competitive alternative to traditional call and demand service. *ETA Order* at 13.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Filing of Application

On June 2, 2014, Rasier-PA filed an application for a certificate of public convenience to operate an experimental ride-sharing network service between points in Commonwealth of Pennsylvania, excluding points originating or terminating in the Counties of Beaver, Clinton,

⁵ N.T. 66-67, 70 and 74.

Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union.⁶ Rasier-PA is a limited liability company (“LLC”) organized under the laws of Delaware and registered as a foreign LLC in Pennsylvania. The manager of Rasier-PA is Travis Kalanick, and there are no other members of the LLC.⁷ Evidentiary hearings were held on August 18-19, 2014 and September 9, 2014. At the hearings, Rasier-PA presented the testimony of Matthew Gore, Henry Gustav Fuldner, Brian Bashin, Sally J. Guzik, Rebecca Gonzalez-Bartoli, and Lori Sergent.

B. Rasier-PA’s Witnesses⁸

Mr. Gore is employed by UTI and is currently General Manager-Uber Florida.⁹ His immediate prior position was Associate General Manager-Uber Pittsburgh.¹⁰ As Associate General Manager-Uber Pittsburgh, Mr. Gore’s responsibilities were to develop and grow the business, which included establishing and maintaining the quality of the service supplied to the public and evaluating business opportunities for expansion.¹¹

Mr. Fuldner is UTI’s Director of Insurance and Risk Management.¹² He is responsible for the procurement of insurance for the benefit of the company and its risk management needs, including insurance maintained on behalf of operators.¹³ These responsibilities include the purchase of insurance in all areas where UTI subsidiaries operate, including Pennsylvania.¹⁴

⁶ On July 17, 2014, MTR Transportation, Inc., t/d/b/a K-Cab Co. and Rasier-PA filed a Restrictive Amendment and Stipulation, further excluding the County of Montour and that portion of the County of Luzerne which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County.

⁷ N.T. 53.

⁸ Rasier-PA M.B. at pp. 4-6.

⁹ N.T. 49.

¹⁰ N.T. 50.

¹¹ N.T. 50.

¹² N.T. 511.

¹³ N.T. 511.

¹⁴ N.T. 512.

Mr. Bashin, Chief Executive Officer for Lighthouse for the Blind, testified as to the benefits of ridesharing for visually impaired individuals.¹⁵ Ms. Guzik, Ms. Gonzalez-Bartoli and Ms. Sergent are residents of Pennsylvania who testified as to their need for the proposed service.¹⁶

C. Description of Proposed Service¹⁷

By the experimental service application, which was filed pursuant to Section 29.352 of the Commission's regulations, 52 Pa. Code § 29.352, Rasier-PA requests authority to utilize a digital platform to connect passengers to independent ridesharing operators ("operators") using their personal vehicles.¹⁸ Under Rasier-PA's proposal and the ridesharing services that are currently provided pursuant to the *ETA Order*, Rasier-PA licenses technology from UTI to generate leads from riders and contracts with operators to provide ridesharing services.¹⁹ When operators partner with Rasier-PA, they are furnished a smartphone that is preloaded with a mobile application ("App"), which is the technology Rasier-PA licenses from UTI, allowing the operators to receive and accept ride requests.²⁰ The operators receive the gross fare, less twenty percent that is paid to cover fees, including the licensing of the technology.²¹

Riders request transportation through the Internet or an App on their smartphones or tablets and are required to create a user account and supply a valid credit card or bank account number.²² To use the App on their smartphones or tablets, riders must download the App.²³ When riders want to request a ride, they open the App and see a map with a pin that they can

¹⁵ N.T. 160-161.

¹⁶ N.T. 34-38 and 178-184.

¹⁷ Rasier-PA M.B. at pp. 6-9.

¹⁸ Rasier-PA does not propose to transport passengers, employ operators or own vehicles. N.T. 56, 57-58.

¹⁹ N.T. 57.

²⁰ N.T. 57.

²¹ N.T. 200.

²² N.T. 55, 480-481.

²³ N.T. 55.

move to their current location or to the location they want to use for the originating point of the ride.²⁴ To request a ride through the App, the rider clicks “request a ride” and then confirms that he or she would like a ride originating at the location selected on the App.²⁵

Prior to requesting a ride, riders are able to view the applicable rates being charged. Riders also have the option of entering their destination and requesting an estimated fare before booking a ride.²⁶ Rasier-PA proposes to use a tariff similar to what was filed with the Commission in connection with the *ETA Order*.²⁷ Under that tariff, the rate may be calculated on the basis of time and distance, will have a base fare, may include a flat rate for certain trips, and may increase or decrease as necessary to match supply and demand. “Dynamic” or “surge” pricing, which is used in times of extreme demand, is disclosed in advance to riders, who must then confirm that they still want to request a ride.²⁸ Additionally, cancellation and cleaning fees may be assessed with advance notice to the customer.²⁹

Upon the rider requesting a ride, the closest operator who has signaled as being available to provide transportation is pinged.³⁰ If the operator accepts the request, he or she receives the user’s location and proceeds to pick up the rider.³¹ If the operator does not accept the request, it automatically goes to the next closest available operator.³² When an operator accepts a request, the rider receives the vehicle type and license number, a photo of the operator, an indication of the operator’s current location and estimated time of arrival. The rider is also able to watch the

²⁴ N.T. 57, 476.

²⁵ N.T. 57, 476.

²⁶ N.T. 80.

²⁷ Applicant Exhibit 3; N.T.80.

²⁸ N.T. 476.

²⁹ N.T. 80.

³⁰ N.T. 56.

³¹ N.T. 56.

³² N.T. 229.

location of the operator's vehicle on the App while the operator is en route to the rider's location.³³ Operators are not permitted to solicit or accept street hails.³⁴

Upon completion of the trip, no cash exchanges hands since the rider's payment information is already on file.³⁵ The customer simply exits the vehicle, and an electronic receipt is transmitted to the passenger's email address or App documenting the details of the trip.³⁶ The receipt contains information for the passenger to contact the Commission if he or she has a complaint about the service that was provided.³⁷

Affiliates of Rasier-PA offer ridesharing services in over 160 cities and over 45 countries around the world.³⁸ Innovation and technology have enabled Rasier-PA to offer affordable and safe transportation options to riders on demand. Ridesharing fill gaps in the existing transportation structure and provides compelling societal benefits.

III. SUMMARY OF EXCEPTIONS

Under the clear language of the Public Utility Code and well-established case law, the two questions that need to be addressed by the Commission in adjudicating this application are:

- 1) Will the proposed service fulfill some public purpose, or be responsive to a public need or demand?
- 2) Is Rasier-PA fit to provide the proposed service?

Unequivocally, the answer to both questions is yes. The use of an App-based technology that connects passengers with drivers using their own vehicles is revolutionizing the transportation market. The R.D. completely ignores the compelling evidence demonstrating that the proposed service would fulfill and be responsive to a critical public need and demand.

³³ N.T. 58.

³⁴ N.T. 58.

³⁵ N.T. 55, 480-481.

³⁶ N.T. 56.

³⁷ N.T. 129.

³⁸ N.T. 58, 512.

Further, the R.D. wholly disregards mountains of evidence of Rasier-PA's fitness to provide the proposed service. The Commission should reverse the R.D. in its entirety and approve the application for experimental authority to allow this new and innovative service to deliver needed alternatives for safe, reliable and affordable travel throughout Pennsylvania.

It is beyond dispute that ridesharing network services fill significant gaps in the existing transportation infrastructure. Ridesharing provides compelling societal benefits that are responsive to public demand and provide needed transportation options in traditionally underserved neighborhoods. In addition to the conveniences inherent in Rasier-PA's ridesharing model, including the safe cashless transactions and the ease of using the App, the benefits of ridesharing include reductions in wait times and declines in DUI rates. For individuals who are blind or visually impaired, the availability of ridesharing is life-changing in that it enhances their independence due to the ease with which they can access and pay for a ride. By contracting with operators who live in diverse communities and come from all walks of life, Rasier-PA is able to offer more options to the riding public to find a ride whenever it is needed.

The public is demanding this new and innovative product. As the Commission knows from regulating other industries, competition is at the heart of innovation and expands product offerings. Importantly, competition promotes customer choice and economic growth.

Further, Rasier-PA has demonstrated that it is fit to provide the proposed service, noting that affiliates are successfully providing similar service in other jurisdictions and that affiliates currently hold authority from the Commission. Moreover, the record is replete with references to Rasier-PA's propensity to operate legally and safely, including:

- Obtaining a brokerage license in response to concerns raised by Commission staff about ridesharing services

- Filing the pending application and the ETA application when advised by Commission staff that the brokerage license would not cover these operations
- Implementing robust driver integrity requirements and automatically disqualifying individuals who would pose a threat to the safety of the riding public
- Requiring vehicles to meet or exceed Pennsylvania inspection standards
- Removing vehicles that are more than 8 years old and have more than 100,000 miles on the odometer from the platform in compliance with the *ETA Order*
- Complying with the *ETA Order* to use trade dress to mark the vehicles so that Commission enforcement officers can identify them
- Relying on rider feedback to ensure accountability of drivers as to safe driving and the condition of vehicles
- Maintaining “best in class” \$1 million of liability insurance coverage during a trip since before entering Pennsylvania to protect passengers
- Modifying liability insurance coverage to be compliant with the *ETA Order*
- Revising its receipt to include Commission contact information for consumers to submit complaints about the service

Through an industry-leading robust vetting process of operators that is designed to enhance the safety of the riding public, Rasier-PA automatically disqualifies individuals who have been convicted of violent or sexual crimes. Additionally, Rasier-PA reviews operators’ driving records. Likewise, Rasier-PA requires vehicles to have passed Pennsylvania mechanical equipment inspections and goes beyond that to ensure that the vehicles are of a high quality that is demanded by riders. Rasier-PA further relies on a rating and customer feedback system that holds operators accountable and provides incentives to ensure that their driving and vehicles meet the stringent standards of the riders.

The Commission should approve the pending application so that ridesharing can grow in Pennsylvania to reach consumers beyond Allegheny County. All Pennsylvanians deserve access to this critically needed service. Approval of this application will fill the transportation void

experienced throughout Pennsylvania by the riding public and allow operators to continue to start and expand their small businesses, thereby contributing to Pennsylvania's economic growth.

IV. EXCEPTIONS

- A. Exception No. 1: By completely ignoring the compelling evidence demonstrating that the proposed service would fulfill and be responsive to a critical public need and demand, the R.D. fails to address the core issue presented by the application and should be reversed.³⁹**

While the R.D. acknowledges that ridesharing services are generally “of great potential use to the public,”⁴⁰ it completely ignores the compelling evidence produced by Rasier-PA to demonstrate that the proposed service would fulfill and be responsive to a critical public need and demand.⁴¹ It is precisely the public demand and need for the proposed service throughout Pennsylvania that is at the heart of the application. By failing to even consider the compelling need for the proposed service, the R.D. completely misses the point of the application proceeding and should be reversed.

The Commission itself has already gone much further than recognizing that ridesharing services are generally of “great potential use to the public.” Indeed, the Commission has described use of an App-based technology to arrange passenger services as allowing for a “wider ranging, faster and more user friendly scheduling of transportation services.” *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (Order adopted May 22, 2014 at p. 6) (“*Yellow Cab Order*”).

In a Joint Statement accompanying the *Yellow Cab Order*, Commissioner Witmer and Commissioner Brown characterized ridesharing as having “the potential to revolutionize the transportation market and provide customers with more options for travel throughout

³⁹ Findings of Fact Nos. 74-100 are under the label of “Need” but the R.D. ignores the evidence of need presented by Rasier-PA in its discussion of the application.

⁴⁰ R.D. at pp. 31-32.

⁴¹ Rasier-PA M.B. at pp. 12-14, 17-22.

Pennsylvania.”⁴² They also expressed confidence that the market for ridesharing “will grow and thrive in Pennsylvania and provide great benefits to customers.”⁴³ Additionally, in granting ETA authority to Rasier-PA for Allegheny County, the Commission observed that the introduction of a new App-based transportation service provides consumers with another competitive alternative to traditional call and demand service. *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, Pennsylvania*, Docket No. A-2014-2429993 (July 24, 2014 at p. 13) (“ETA Order”).

Section 1103(a) of the Public Utility Code provides that a certificate of public convenience shall be granted if the Commission determines that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a). The Commonwealth Court has interpreted the statutory mandate as requiring an applicant to demonstrate that its proposed service will fulfill some useful public purpose, be responsive to a public need or demand, and that it is fit to provide the proposed service. *Purolator Courier Corp. v. Pennsylvania Public Utility Commission*, 51 Pa. Cmwlth. 377, 414 A.2d 450 (1980).

The evidence overwhelmingly demonstrates that the proposed service would “fulfill some useful public purpose” and “be responsive to a public need or demand.” *Purolator Courier, supra*. Indeed, ridesharing network services fill significant gaps in the transportation infrastructure in every market where they are introduced. While ridesharing is currently available only to the riding public in Pennsylvania within Allegheny County, its compelling societal benefits extend well beyond those boundaries and are responsive to public need and

⁴² Joint Statement at p. 1.

⁴³ Joint Statement at p.2.

demand throughout the Commonwealth for reliable, affordable and safe alternatives to existing modes of transportation. At the heart of Rasier-PA's proposal is giving the customer a choice.⁴⁴

The Commission should listen to its fellow citizens. Ms. Rebecca Gonzalez-Bartoli, a Pennsylvania rider on disability who used Uber in another part of the country earlier this year, testified:

Uber if used in more small towns where I'm from in the Wilkes-Barre/Scranton area would be very helpful to multiple people, because right now the only transportation I am able to use is buses and shared ride programs, and it takes about two hours to get to a doctor's appointment that's 20 minutes away. So I'm spending a lot of time and a lot of stress and anxiety to get to a doctor's appointment that I have maybe like once or twice a week where with Uber, it would take 15, 20 minutes tops to get there and back.⁴⁵

Ms. Lori Sergent, from the Allentown area, explained that although she has never used the App because it is not available in her area, she would absolutely use if it is offered. She does not use taxi services in her area because of their reputation for being untrustworthy and she had a bad experience with a chauffeur service that could not find her.⁴⁶ Ms. Sergent testified:

So when I saw this app that shows where you're able to see exactly the driver, when they're going to show up and everything, I thought that was an awesome idea... Well, my husband is handicapped and he – we don't really have many options for travel and also if our van would break down, which we only have one vehicle, it would help me get around; if I needed a ride to an appointment or to just go somewhere, then I would have that option to have service. And I don't know, just if I ever need it because, like I said, I'm the only one who can drive my kids around and my husband.⁴⁷

Before entering a new market to offer ridesharing services, Rasier-PA's witness, Mr. Gore, explained that it considers where the public has checked on the availability of the App since that signals public need. He said that it is also necessary to consider whether a certain

⁴⁴ N.T. 66-67.

⁴⁵ N.T. 42-43.

⁴⁶ N.T. 179.

⁴⁷ N.T. 179-180.

market is underserved by existing transportation options,⁴⁸ specifically pointing to the number of taxis per 1,000 people in Philadelphia and Pittsburgh, which is less than two, compared to ten taxis per 1,000 people in Washington, D.C.⁴⁹ In short, Mr. Gore testified: “As we enter new markets, it is important to know what the expected response will be so that when we do, it is successful.”⁵⁰ He added, [o]nce someone tries it, they generally find out exactly why they need it, and that’s why we say it...has a viral effect.”⁵¹

Mr. Gore described the experience of Rasier-PA affiliates, when launching a new service, as consistently one of overwhelming and instant demand and use.⁵² Referring to those successes and the studies and data he has reviewed, he testified that “we would be successful in offering the service based on the immediate need that people have in all of the areas that our applications cover.”⁵³ He added: “I would be comfortable making that recommendation to my managers as a business decision for them to make for our entry and expect success.”⁵⁴

Further, evidence was introduced about the compelling societal benefits of ridesharing that are clearly responsive to public demand. For instance, as the CEO for Lighthouse of the Blind, Mr. Bashin offered testimony describing the benefits of the proposed service for blind and visually impaired individuals:

This is not a discretionary item or just might be nice item. This is something that some of use every day to get to work, to do shopping, to visit our family, that kind of thing. So it is not just something that’s superficial. It will be the heart and soul of how blind and visually impaired people get around and how baby boomers who are not going to stay at home will decide on having options later on when they can’t drive.⁵⁵

⁴⁸ N.T. 52.

⁴⁹ N.T. 75-76.

⁵⁰ N.T. 51-52.

⁵¹ N.T. 51.

⁵² N.T. 66.

⁵³ N.T. 78.

⁵⁴ N.T. 78.

⁵⁵ N.T. 165.

As a blind person himself, Mr. Bashin testified that he has used taxis “before there was a Uber” and noted that he “can’t just look across the street and hail them.”⁵⁶ He said that he especially appreciates the accountability and recordkeeping for his own safety.⁵⁷ Noting that the App is completely accessible to blind and visually impaired individuals, Mr. Bashin also explained how he can text the driver and say, “Look for me. I’m the guy with the long white cane. I can’t see you, so you’re going to have to honk or pull up to the curb.”⁵⁸ Mr. Bashin’s organization assists visually impaired individuals travel independently, and in his twenty years devoted to that cause, he has not seen any one thing so significantly impact that goal as being able to summon a ride “when you want, to show up when you want, to do it so safely and a little cheaper than it has been.”⁵⁹ As Mr. Bashin testified, “[o]ptions are great.”⁶⁰

Mr. Gore also explained how ridesharing is responsive to public need or demand by providing a safe, reliable and affordable transportation option. For instance, Mr. Gore noted that riders do not need to go outside or look up contact information to get a ride, but that using the App is “literally as simple as pressing a button.”⁶¹ Referring to the overall benefits to riders arising from the proposed service, he testified that:

They have the added comfort of knowing who is coming; they know when that car will be there. They know that there’s going to be an electronic record of their transaction of their trip. They know that they’re not required to carry cash. They know that their credit card will be accepted. They know that there’s a feedback system that allows for any sort of complaint to be processed in a way that is going to satisfy them. They know that if they lose an item in the vehicle, that we can instantly track that down. They know that they’ve got an alternative option instead of drinking and driving or instead of walking when no other transportation is available, and it’s just another choice, so they know that they get to choose and not have a single transportation option chosen for them.⁶²

⁵⁶ N.T. 162.

⁵⁷ N.T. 162.

⁵⁸ N.T. 163.

⁵⁹ N.T. 165.

⁶⁰ N.T. 170.

⁶¹ N.T. 66.

⁶² N.T. 67.

Mr. Gore also testified how the entry of ridesharing into a new market reduces wait times for a ride especially in underserved neighborhoods. Referring to a study conducted in Boston, where wait times were previously over twenty minutes for over a third of the riders, the introduction of ridesharing resulted in 96 percent of the ride requests being fulfilled within twenty minutes, with a median wait time of three-and-a-half minutes.⁶³ He further shared his own personal experience in Washington, D.C., noting that prior to the introduction of ridesharing services, he was often unable to get a taxicab or had to wait a very long time. He estimated that now he never has to wait longer than ten minutes.⁶⁴

Another benefit of ridesharing touted by Mr. Gore is its effect on driving under the influence (“DUI”) rates. Specifically, he testified that DUI rates decline in markets when ridesharing becomes available.⁶⁵ He cited one study showing that DUI rates fell as much as ten percent when ridesharing entered the market in Seattle.⁶⁶ Additionally, he noted that in Pittsburgh, “ride requests spiked enormously at the times that bars are closing.”⁶⁷

Rasier-PA has demonstrated that the proposed service is responsive to a public need or demand. Besides the riders’ individual stories of need for the proposed service and the needs of the public that Rasier-PA identifies through the monitoring of potential new markets, Mr. Bashin’s testimony illustrated the valuable benefits of ridesharing in enabling blind and visually impaired individuals gain independence in terms of their transportation options. Further, Mr. Gore’s testimony highlighted compelling societal benefits of ridesharing on riders, including its effects on service to underserved neighborhoods and DUI rates.

⁶³ N.T. 70.

⁶⁴ N.T. 70.

⁶⁵ N.T. 75.

⁶⁶ N.T. 75.

⁶⁷ NT. 75.

Yet, the R.D. simply ignores this compelling public need for the proposed service and instead focuses on the red herrings raised by the Protestants who do not wish to compete with this new and innovative service for which consumers are clamoring. If competitive options are not made available, it is the riding public who will lose. To permit the Protestants' efforts to affect approval of the proposed experimental service is akin to the government preventing Henry Ford from producing an affordable automobile because it would be harmful to blacksmiths.

B. Exception No. 2: Despite the mountain of evidence in the record demonstrating Rasier-PA's fitness to provide the service, the R.D. erroneously reaches the conclusion that Rasier-PA failed to meet its burden to establish fitness. (Conclusion of Law No. 10, R.D. at p. 41).

1. The R.D. completely disregards the experience of Rasier-PA's affiliates in providing ridesharing services in other jurisdictions and in offering licensed brokering services in Pennsylvania.

In considering Rasier-PA's fitness to provide the proposed service in Pennsylvania, the R.D. completely disregards – *i.e.*, does not even *mention* – the vast experience of Rasier-PA's affiliates in offering ridesharing services in over 160 cities and over 45 countries around the world.⁶⁸ The R.D. also neglects to recognize: (i) that a model that is very similar to what is proposed here has been successfully deployed in Washington, D.C.;⁶⁹ (ii) Rasier-PA's ETA experience in Allegheny County; (iii) the success of Rasier-PA's affiliates as they enter new markets; and (iv) that Rasier-PA affiliates already hold authority from the Commission.⁷⁰

Rasier-PA's affiliate, Gegen, LLC, another wholly owned subsidiary of UTI, already holds authority to operate in Pennsylvania,⁷¹ which supports a finding of overall technical, financial and legal fitness to provide the proposed service. *See South Hills Movers, Inc. v. Pa.*

⁶⁸ N.T. 58, 512.

⁶⁹ N.T. 58.

⁷⁰ Rasier-PA M.B. at pp. 25-26.

⁷¹ N.T. 60. Application of Gegen, LLC, for Brokerage License, Docket No. A-2012-23173 (Order adopted January 24, 2013) (“*Gegen Brokerage License Order*”).

P.U.C., 601 A.2d 1308 (Pa. Cmwlth. Ct. 1992) (existing carriers are presumed to possess the technical, financial and legal fitness to obtain additional operating authority) (“*South Hills Movers*”). As noted in the *Gegen Brokerage License Order*, requests for service are received via proprietary dispatch software, and carriers are contracted by Gegen to provide service. The application showed UTI as the sole member of the Gegen, and the *Gegen Brokerage License Order* identified Mr. Kalanick as the President and CEO of Gegen. It further noted that he had two years of experience in the limousine industry, which included dispatching, hiring, training, risk management, marketing and budgeting. *Gegen Brokerage License Order* at 1.

Success – alone – is indicative of fitness. Rasier-PA’s affiliates are already successfully providing ridesharing services across the country and throughout the world. Rasier-PA affiliates experience success each time they enter a market. With this track record, it is absurd to suggest that the government is better-suited to evaluate fitness to provide the proposed service.

When this success is coupled with the fact that Rasier-PA affiliates already hold authority from the Commission, it is presumed to possess the necessary fitness to provide the proposed service. While the R.D. does not hesitate in its discussion of Rasier-PA’s propensity to operate legally to note that it has a single member that is also the CEO of its parent, UTI, the R.D. inexplicably fails to make this link in addressing technical and financial fitness.⁷²

2. In discussing Rasier-PA’s commitment to ensuring driver integrity, the R.D. wholly disregards the evidence demonstrating that Rasier-PA’s standards for its operators exceed the requirements of the Commission’s regulations. (R.D. at pp. 35-39).

The R.D. finds that Rasier-PA “failed to demonstrate that it has a plan or even a commitment to accept responsibility for its role in ensuring....driver integrity.”⁷³ This finding

⁷² The R.D. also errors by simply dismissing the financial information submitted by Rasier-PA, which shows forecasted operating revenues of nearly \$2 million. Applicant Exhibit 2. Findings of Fact Nos. 60-61, R.D. at p. 36.

⁷³ R.D. at p. 35.

wholly disregards the compelling evidence presented at the hearing by Rasier-PA regarding the high standards it has developed to ensure that the riding public is safe.⁷⁴

Mr. Gore testified that Rasier-PA is committed to ensuring the integrity of the operators.⁷⁵ He thoroughly described criminal background checks, driver history records, and a zero tolerance for the use of alcohol or drugs while operating on the platform. Although these items are addressed in the R.D.'s findings of fact,⁷⁶ they are not even acknowledged in the discussion of Rasier-PA's commitment to driver integrity.⁷⁷ As Rasier-PA's industry-leading driver integrity requirements are a linchpin of its proposal and demonstrate its commitment to offering safe ridesharing services, it is critical to address them in detail here.

Notably, Rasier-PA requires operators to meet standards that are significantly more stringent than the standards set forth in the Commission's regulations at 52 Pa. Code §§ 29.502-29.507.⁷⁸ In addition to basic requirements for operators to possess a current, valid driver's license, proof of registration, proof of motor vehicle insurance and be at least 21 years of age, Rasier-PA conducts extensive criminal background checks and reviews of driving history records, automatically disqualifying individuals who do not meet Rasier-PA's high standards.⁷⁹

Specifically, Rasier-PA conducts a local and national criminal background check that includes the Multi-State/Juris Criminal Records Locator and the National Sex Offender Registry ("Registry") database before the operator may access the platform to receive requests for transportation. A match on the Registry or a conviction that appears on a criminal background

⁷⁴ Rasier-PA M.B at pp. 36-38.

⁷⁵ N.T. 60.

⁷⁶ Findings of Fact Nos. 49-53.

⁷⁷ R.D. at pp. 35-36.

⁷⁸ N.T. 60.

⁷⁹ N.T. 60-63.

check within the past 7 years for crimes of violence, sexual abuse, felony robbery, or felony fraud, automatically and permanently disqualifies an individual from acting as an operator.⁸⁰

By contrast, the Commission's regulations require common carriers to review criminal history record for only the last 12 months. 52 Pa. Code § 29.505(a). Further, the Commission's regulations only prevent persons with criminal backgrounds from operating vehicles "to the extent the conviction relates adversely to that person's suitability to provide service safely and legally." 52 Pa. Code § 29.505(c). No crimes – including those of violence or sex offenses – automatically disqualify individuals from driving for a common carrier.

As to the driving history records of operators, Rasier-PA performs these reviews before the operator may access the platform to receive requests for transportation. A conviction that appears on a driving history check within the past 7 years for aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade police, or the use of a motor vehicle to commit a crime, or a conviction in the previous 3 years for driving with a suspended or revoked license, automatically disqualifies an individual.

By contrast, the Commission's regulations require common carriers to review driver history records for only the preceding 3 years. Additionally, the regulations do not prohibit a common carrier from allowing a driver with poor driving history to operate a vehicle. Moreover, the regulations do not automatically disqualify any individual - including one who has been convicted of driving under the influence - from operating a vehicle. 52 Pa. Code § 29.504.

Rasier-PA has a zero tolerance policy on the use of drugs or alcohol while an operator is providing transportation services. Notice of this zero tolerance policy is maintained on its website, along with procedures to report a complaint about an operator whom the rider suspects was under the influence of drugs or alcohol during the course of the ride. Rasier-PA

⁸⁰ N.T. 60-61.

immediately suspends an operator upon receipt of such a passenger complaint and the suspension lasts the duration of Rasier-PA's investigation. If Rasier-PA concludes that the operator was under the influence of drugs or alcohol while operating on the platform, the operator will be deactivated from the system.⁸¹

By contrast, the Commission's regulations simply provide that a driver for a common carrier may not be under the influence of alcohol or a controlled substance while operating a vehicle in passenger service. 52 Pa. Code §§ 29.506-29.507. The regulations do not require common carriers to adopt a zero tolerance policy or immediately suspend a driver who is suspected of using alcohol or drugs. The R.D.'s Finding of Fact No. 54, observing that Rasier-PA does not require operators to submit to any type of drug testing, should be disregarded due to irrelevance, as the Commission imposes no such requirement on common carriers.

The R.D. erroneously claims that "Mr. Gore could not articulate any plan for continuing to ensure that the drivers maintained driving history and insurance other than" the initial requests.⁸² To the contrary, Mr. Gore testified that vehicle registration and personal insurance are checked annually.⁸³ Moreover, Mr. Fuldner reiterated that point relative to insurance, explaining that operators must provide updated evidence of insurance prior to the expiration date or face deactivation.⁸⁴ As to plans for re-checking criminal backgrounds and driving records, Mr. Gore testified that he had not yet encountered this situation, but noted his belief that there is a process in place for these items to be checked annually.⁸⁵ A simple solution to any concerns about the ongoing process is for the Commission to require Rasier-PA to submit a compliance plan as a condition of approving the application. A required element of that compliance plan

⁸¹ N.T. 62.

⁸² R.D. at p. 35.

⁸³ N.T. 307-308.

⁸⁴ N.T. 548.

⁸⁵ N.T. 308.

could be a protocol for the annual review of criminal backgrounds and driving records of operators, along with a description of a driver training program, consistent with the *Yellow Cab Order*. In fact, regardless of a compliance plan, Rasier-PA would be required under the Commission's regulations to review criminal history records every two years (52 Pa. Code § 29.505(b)) and to obtain a driver history every twelve months (52 Pa. Code § 29.504(b)).

Focusing on the irrelevant fact that the operators are independent contractors,⁸⁶ which has no bearing on the quality of the service that is provided, the R.D. completely ignores the evidence offered by Rasier-PA regarding the accountability of operators due to the customer feedback and ratings system. The way that Rasier-PA receives information from riders is through customer service channels available through the website and through feedback left on a trip, which could include replying to a receipt or using email contact information provided on the website to lodge complaints.⁸⁷ This receipt will also contain information to contact the Commission with complaints about the service.⁸⁸ In addition, riders may rate operators and offer feedback through the App. When Rasier-PA receives a complaint from a customer, it investigates the issue and timely responds to the customer.⁸⁹ As Mr. Gore testified, the availability of feedback "creates a situation where independent operators seek to provide the best service possible with the best vehicles possible because they know they're accountable."⁹⁰

Moreover, Mr. Gore emphasized that when operators fail to fulfill the requirements of their agreements with Rasier-PA, they are deactivated from the system. Examples of conduct that would result in deactivation include not permitting a guide dog to ride with a blind person,⁹¹

⁸⁶ Findings of Fact Nos. 28, 29, 46. R.D. at p. 35.

⁸⁷ N.T. 65.

⁸⁸ N.T. 129.

⁸⁹ N.T. 65.

⁹⁰ N.T. 269.

⁹¹ N.T. 265; Findings of Fact No. 82 is in error, as the testimony demonstrated that guide dogs must be permitted, or the operator will be deactivated.

accepting a street hail,⁹² fraud,⁹³ lapses in personal insurance,⁹⁴ and for failure to provide updated insurance and vehicle registration information.⁹⁵

3. In discussing Rasier-PA's commitment to ensuring vehicle safety, the R.D. wholly disregards the evidence demonstrating that Rasier-PA's vehicle requirements exceed the Commission's regulations. (R.D. at pp. 35-36).

The R.D. finds that Rasier-PA “failed to demonstrate that it has a plan or even a commitment to accept responsibility for its role in ensuring vehicle safety.”⁹⁶ This finding overlooks the substantial evidence establishing Rasier-PA's commitment to state vehicle inspection requirements and to providing customers with the quality of vehicles they demand.⁹⁷

Rasier-PA requires all vehicles operated on the platform to pass a comprehensive annual safety inspection, as required by the Commission's regulations at 52 Pa. Code §§ 29.402 and 29.405. Such inspection must be performed by an official inspection station and comply with Pennsylvania vehicle laws and regulations at 75 Pa. C.S. Chapter 47 and 67 Pa. Code §§ 175.61-175.80, including but not limited to suspension and steering components; braking systems; tires and wheels; lighting and electrical systems; and horns and warning devices.⁹⁸ Further, the vehicles, which are identified by markings that are in use pursuant to the *ETA Order*, will be subject to routine inspections by Commission enforcement officers and can be taken off the street if they do not meet the state's standards.⁹⁹ *See* 52 Pa. Code § 29.402.

PennDOT inspections certify that a vehicle is safe for operation on the highway.¹⁰⁰ As Mr. Gore testified, if the annual Pennsylvania inspection requirement is “sufficient for cars to be

⁹² N.T. 267.

⁹³ N.T. 650.

⁹⁴ N.T. 519.

⁹⁵ N.T. 308.

⁹⁶ R.D. at p. 35.

⁹⁷ Rasier-PA M.B at pp. 38-40.

⁹⁸ N.T. 65.

⁹⁹ N.T. 117, 267, 292.

¹⁰⁰ N.T. 108.

on the road with pedestrians and passengers, then they're sufficient for us.”¹⁰¹ He further explained, “our customers should be able to rely upon the state in the same way as if they're crossing the street as a pedestrian, that a car, when it hits their brakes, will not continue to drive into them,” and noted that the state inspection provides riders with a baseline of safety that is consistent with other vehicles on the road.¹⁰²

However, Rasier-PA goes above that state inspection requirement by requiring the use of high quality vehicles, as demanded by their riders, and by following up on customer feedback about the quality of the vehicles. For instance, a vehicle that is aesthetically displeasing or makes excessive noise may pass an inspection, but will not pass the standards of Rasier-PA's customers.¹⁰³ The Commission's routine inspection process layered on top of Rasier-PA's efforts optimizes the safety of the vehicles being used in Rasier-PA's proposed service.

Additionally, contrary to the R.D.'s claim that Rasier-PA proposes to use 10-year old vehicles,¹⁰⁴ Rasier-PA requires that vehicles be no more than 8 years old.¹⁰⁵ Also, finding that Rasier-PA will allow operators to use “all passenger vehicles and light duty trucks which have four doors and enough seatbelts to transport at least four passengers,”¹⁰⁶ the R.D. fails to acknowledge Mr. Gore's further qualification that the vehicles must be in “excellent condition”¹⁰⁷ and meet other requirements of the Commission's regulations, as well as the customers' standards.¹⁰⁸ Specifically, Rasier-PA further requires that vehicles be in a condition that meets or exceeds the standards set forth in the regulations, including seats in working order; vehicles in clean and sanitary condition; factory type heaters in working order; clean trunk

¹⁰¹ N.T. 280.

¹⁰² N.T. 108-109.

¹⁰³ N.T. 64-65.

¹⁰⁴ Finding of Fact No. 43

¹⁰⁵ N.T. 63.

¹⁰⁶ Findings of Fact No. 48.

¹⁰⁷ N.T. 64.

¹⁰⁸ N.T. 65.

compartments suitable for carrying luggage; exteriors free of large dents or gouges; four matching wheel covers; and operative air conditioning. 52 Pa. Code § 29.403

In describing Rasier-PA's vehicle safety plan as deficient, the R.D. refers – without any record support – to the lack of “any acknowledgement or appreciation for the additional maintenance needs that a vehicle used in its service may require above and beyond the wear and tear commonly experienced by the typical private passenger vehicle.”¹⁰⁹ Absolutely no evidence was introduced into the record to suggest that vehicles used in ridesharing services have higher mileage than “the typical private passenger vehicle” or what might even constitute such typical mileage. Drivers of private passenger vehicles run the gamut in terms of mileage from those who work at home and seldom leave their own community to those who work far from home and have reasons unrelated to work to travel great distances, such as to visit family. Yet, the state inspection requirements apply equally to drivers at each end of the spectrum. No justification exists to single out ridesharing operators and treat them differently than drivers of private passenger vehicles, especially when there has not been any evidence introduced to support the concept that vehicles used for ridesharing are driven more miles than other vehicles.

Indeed, there is testimony in the record supporting the proposition that ridesharing vehicles have lower mileage than other commercial vehicles due to the use of operators who are driving on a part-time or seasonal basis.¹¹⁰ One concept underlying the ridesharing model is that individuals may provide transportation services to members of their community while they are already running errands. This use of ridesharing would not automatically cause the mileage on the vehicle to increase. In short, there is no basis upon which to assume that ridesharing

¹⁰⁹ R.D. at p. 36.

¹¹⁰ N.T. 593-594, 598-599.

vehicles' mileage exceeds that of a typical private passenger vehicle, and the R.D.'s finding of a deficiency based on an assumption that is not supported by the record should be disregarded.

4. In analyzing Rasier-PA's technical fitness, the R.D. improperly considers the completely irrelevant factor that Rasier-PA has no employees and otherwise misstates or overlooks the technical expertise and functions of the employees assigned to Pennsylvania's operations.¹¹¹

In analyzing Rasier-PA's technical fitness, the R.D. improperly considers the fact that Rasier-PA has no employees. It is entirely irrelevant to Rasier-PA's technical fitness whether it has employees. Mr. Gore clearly explained that employees of UTI are assigned to manage operations of subsidiaries.¹¹² Contrary to the R.D.'s claim that no contractual relationship was discussed,¹¹³ Mr. Gore testified that Rasier-PA will contract with UTI to have employees assigned to execute on regulatory responsibilities.¹¹⁴ Part of their job duties as UTI employees is to execute the responsibilities of Rasier-PA.¹¹⁵ These functions include operating office hours, helping operators get on the system, answering questions of operators, handling complaints, auditing documents and suspending drivers.¹¹⁶ In short, explaining how UTI employees are given responsibilities to operate, Rasier-PA, Mr. Gore simply stated: "That's their job."¹¹⁷

Also, contrary to the comment in the R.D. that no one is responsible for regulatory compliance,¹¹⁸ Mr. Gore testified that regulatory compliance in connection with the ETA is the responsibility of the general manager of Uber Pittsburgh, who he identified as Ms. Jennifer Krusius.¹¹⁹ He further noted that Ms. Krusius is assisted by other members of the Uber Pittsburgh operations team, including driver operations managers, operations and logistics

¹¹¹ R.D. at pp. 34-36.

¹¹² N.T. 103, 130

¹¹³ R.D. at p. 36.

¹¹⁴ N.T. 264.

¹¹⁵ N.T. 194-195.

¹¹⁶ N.T. 197, 250, 263, 309.

¹¹⁷ N.T. 264.

¹¹⁸ R.D. at p. 36.

¹¹⁹ N.T. 204-205, 263.

coordinators and marketing or community managers.¹²⁰ He also explained that the team travels to and works out of the Pittsburgh office as necessary to oversee those operations.¹²¹

5. Rasier-PA has clearly demonstrated through overwhelming evidence that it possesses the technical fitness to provide the proposed service.

Through overwhelming evidence presented into the record, Rasier-PA has clearly demonstrated its technical fitness to provide the proposed service. In summary, this evidence consists of the experience of its affiliates providing ridesharing services in other jurisdictions and offering licensed brokering services in Pennsylvania; the imposition of more stringent driver integrity standards than are required by the Commission of common carriers; and the reliance on state vehicle inspection standards, as enhanced by rider feedback and Commission enforcement. Therefore, the Commission should reverse the R.D.'s findings and conclusions to the contrary and find that Rasier-PA is fit to provide the proposed service.¹²²

C. Exception No. 3: The R.D. fails to apply the applicable legal standard in its analysis of whether Rasier-PA has a propensity to operate safely and legally and ignores the numerous examples of Rasier-PA's propensity to operate legally and safely.

Although the R.D. sets forth the applicable legal standard for making a determination of whether Rasier-PA has a propensity to operate safely and legally, it fails to apply that standard in analyzing the issue.¹²³ For the Commission to conclude that an applicant lacks propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an applicant has shown a "persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission." *Application of ATM Corporation of America,*

¹²⁰ N.T. 263.

¹²¹ N.T. 193,197. Finding of Fact No. 11 inappropriately concludes that Mr. Gore "is not familiar with Pennsylvania law." The line of questioning at N.T. 217-218 centered on the Pennsylvania Ridesharing Act, 55 PS. §§ 695.1-695.9, with which Mr. Gore expressed a lack of familiarity. The R.D. does not even discuss that particular statute.

¹²² Rasier-PA M.B. at pp. 25-40.

¹²³ R.D. at 41.

t/d/b/a Classic Limousine Transportation, Docket No. A-00112166 (Order entered September 24, 1996).

Rather than showing a persistent disregard for, flouting, or defiant attitude toward the law, the record is replete with examples of Rasier-PA's propensity to operate safely and legally, including the following:

- Obtaining a brokerage license in response to concerns raised by Commission staff about ridesharing services¹²⁴
- Filing the pending application and the ETA application when advised by Commission staff that the brokerage license would not cover these operations¹²⁵
- Implementing robust driver integrity requirements and automatically disqualifying individuals who would pose a threat to the safety of the riding public¹²⁶
- Requiring vehicles to meet or exceed Pennsylvania inspection standards¹²⁷
- Removing vehicles that are more than 8 years old and have more than 100,000 miles on the odometer from the platform in compliance with the *ETA Order*¹²⁸
- Complying with the *ETA Order* to use trade dress to mark the vehicles so that Commission enforcement officers can identify them¹²⁹
- Relying on rider feedback to ensure accountability of drivers as to safe driving and the condition of vehicles¹³⁰
- Maintaining "best in class" \$1 million of liability insurance coverage during a trip since before entering Pennsylvania to protect passengers¹³¹
- Modifying liability insurance coverage to be compliant with the *ETA Order*¹³²
- Revising its receipt to include Commission contact information for consumers to submit complaints about the service¹³³

¹²⁴ N.T. 83.

¹²⁵ N.T. 83.

¹²⁶ N.T. 63.

¹²⁷ N.T. 33.

¹²⁸ N.T. 64.

¹²⁹ N.T. 117, 267.

¹³⁰ N.T. 269.

¹³¹ N.T. 565.

¹³² Applicant Exhibit 6.

The R.D. fails to even consider whether Rasier-PA, when the evidence of record is taken as a whole, has shown a persistent disregard for, flouting or defiant attitude toward the law, which it clearly has not, and to the contrary, has established a propensity to operate safely and legally.¹³⁴ Instead of conducting the requisite analysis, the R.D. simply referred to the continued operation of a Rasier-PA affiliate after the issuance of a cease and desist order by the Commission on July 24, 2014 and found that, “it is difficult to conclude that Uber Technologies or its subsidiaries has any respect for the authority of the Commission or that it will submit itself to the Commission’s authority in the future.”¹³⁵

It is well-established that an applicant’s prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. *Brinks, Inc. v. Pennsylvania Public Utility Commission*, 500 Pa. 387, 456 A.2d 1342 (1983); *Gettysburg Tours, Inc. v. Pennsylvania Public Utility Commission*, 42 Pa. Commw. 399, 400 A.2d 945 (Pa. Cmwlt. 1979). The Commission may grant additional authority if it finds that such unlawful operations resulted from good-faith misunderstanding of the law. *W.C. McQuaide, Inc. v. Pennsylvania Public Utility Commission*, 137 Pa. Commw. 282, 585 A.2d 1151 (Pa. Cmwlt. 1991).

As to operations that continued after issuance of a cease and desist order by the Commission, Mr. Gore testified that these activities have been conducted through Rasier LLC (“Rasier”), a different wholly owned subsidiary of UTI.¹³⁶ He explained that his understanding of the Commission’s jurisdiction and current regulations is that they do not address these

¹³³ N.T. 129.

¹³⁴ Rasier-PA M.B. at 41-45.

¹³⁵ R.D. at p. 42.

¹³⁶ N.T. 81-83.

operations.¹³⁷ Despite that position, however, he noted that Gegen had applied for and received a statewide brokerage license.¹³⁸ Upon being advised that the Gegen license would not cover ridesharing, the decision was made for Rasier-PA to file this experimental application and the ETA application to provide similar services.¹³⁹

Mr. Gore further testified that Rasier did not stop operating after issuance of the cease and desist order because of the grant of ETA to Rasier-PA the same day, which allowed riders to continue accessing a much-needed safe, reliable and affordable alternative to existing transportation options.¹⁴⁰ He emphasized, “[w]e’re providing ways for people to get home from nights out and not get a DUI; we’re providing ways for people to get to and from their work and hospitals and other places they need to be when they simply can’t and won’t avail themselves of current transportation options.”¹⁴¹ Noting that Rasier was providing alternative choices to consumers and operators as another method of income, Mr. Gore explained that it continued “to operate in order to not pull the rug out from those people.”¹⁴²

While the grant of ETA was conditioned upon the filing of a tariff and a Form E Certificate of Insurance, Rasier-PA was in substantial compliance with those conditions immediately¹⁴³ and obtained a certificate of public convenience within a matter of weeks. In fact, Mr. Fuldner testified that no accidents occurred during that time period where the pre-ETA structure of the insurance resulted in a delay or denial of a claim for bodily injury or property damage.¹⁴⁴ Under all of these circumstances, it would have been a misfortune to pull a needed service off the market in Allegheny County, denying consumers access to transportation

¹³⁷ N.T. 82.

¹³⁸ N.T. 83.

¹³⁹ N.T. 83.

¹⁴⁰ N.T. 83.

¹⁴¹ N.T. 83.

¹⁴² N.T. 83.

¹⁴³ Applicant Exhibit 6.

¹⁴⁴ N.T. 523-526.

alternatives that allowed them to attend school, get to work and visit dying relatives in the hospital and depriving operators of the opportunity to maintain and grow their small businesses.

This is a far cry from a situation in which an applicant has been found to have violated the Commission's regulations on multiple occasions or persistently acted in a way that demonstrates that it has not intent to operate legally or safely. In fact, neither Rasier-PA, its parent nor any of its affiliates has been found by the Commission to have violated a provision of the Public Utility Code or regulations.

Moreover, with respect to the pending complaint proceeding, those are merely *allegations* of unlawful operations by Rasier-PA's parent that have not been adjudicated by the Commission. UTI was under no obligation to stop licensing its software product to a subsidiary upon the filing of that complaint. It is far from clear under Pennsylvania law that licensing an App for this purpose constitutes the brokering of transportation services. The mere fact that several bills have been introduced by the General Assembly to capture these services suggests that they are not necessarily covered by the Public Utility Code.¹⁴⁵

As no prior operations have been determined to be unlawful, and Rasier-PA has worked with the Commission to fit its model into an antiquated regulatory framework that was not designed for products that are now available due to technology, its activities and efforts support a finding of legal fitness. As a whole, the record demonstrates Rasier-PA's legal fitness, and the application should be granted commensurate with the public need and support for the proposed service which is immediate and overwhelming.

D. Exception No. 4: The R.D. errs in finding that the insurance proposal is inadequate, particularly given Rasier-PA's commitment to maintain liability insurance coverage in amounts that meet and exceed the Commission's requirements., and otherwise misstates several elements of Rasier-PA's proposal.¹⁴⁶ (R.D. at pp. 36-41).

¹⁴⁵ See, e.g., S.B. 1457; H.B. 2446; H.B. 2445; H.B. 2453; and 2468.

¹⁴⁶ Findings of Fact Nos. 108, 109, 112, 114, 115, 118, 122, 128-134, 142-148, and 151.

The R.D. is initially deficient in that it does not even describe the requirements in the Commission's regulations for insurance maintained by common carriers of passengers. Moreover, the R.D. fails to discuss Rasier-PA's insurance proposal, instead opting to dwell on secondary issues and details that go well beyond the scope of the Commission's insurance regulations and to delve into matters that are between insurance companies and their insured, which are irrelevant to the pending application.

At the outset, it is important to describe the Commission's requirements and explain how Rasier-PA's proposal fulfills them. Section 32.11(b) of the regulations provides that the liability insurance maintained by a common carrier of passengers on vehicles capable of transporting fewer than 16 passengers shall be in an amount not less than \$35,000 to cover liability for bodily injury, death or property damage incurred in an accident arising from authorized service, and requires as follows:

The \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident. This coverage shall include first party medical benefits in the amount of \$25,000 and first party wage loss benefits in the amount of \$10,000 for passengers and pedestrians. Except as to the required amount of coverage, these benefits shall conform to 75 Pa.C.S. §§ 1701-1799.7 (relating to Motor Vehicle Financial Responsibility Law). First party coverage of the driver of certificated vehicles shall meet the requirements of 75 Pa.C.S. § 1711 (relating to required benefits).

52 Pa.Code § 32.11(b). As demonstrated by the evidence admitted into the record, the insurance coverage proposed by Rasier-PA, as amended during the hearing, complies with and exceeds the minimum requirements imposed by the Commission on motor carriers of passengers.¹⁴⁷

For purposes of explaining Rasier-PA's proposal for liability insurance coverage, Mr. Fuldner relied on the terminology used in the Commission's *ETA Order* as follows:

¹⁴⁷ Rasier-PA M.B. at pp. 26-36.

Stage 1: Driver opens the App and is logged in to the system

Stage 2: Driver receives and accepts a ride request and travels to pick up the passenger

Stage 3 – Driver picks up the passenger, drives the passenger to the destination and drops off the passenger

For Stages 1, 2 and 3, Mr. Fuldner testified that Rasier-PA proposes to provide primary liability insurance coverage for all vehicles operating on the platform from the time the App is on and the operator has logged into the system until transportation services have been completed.¹⁴⁸ The only exception to Rasier-PA's proposal to provide primary coverage is if an operator secures a policy that is specifically designed for ridesharing services or other for-hire transportation. In that limited situation, Rasier-PA's coverage would be excess to that primary policy.¹⁴⁹

Also, for all three stages, Rasier-PA proposes to provide \$25,000 of first party medical benefits and \$10,000 of first party wage loss benefits for passengers and pedestrians, as required by Pennsylvania state law.¹⁵⁰ Additionally, Rasier-PA proposes to fully comply with 75 Pa.C.S. §§ 1701-1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirement of 75 Pa.C.S. § 1711 for first party coverage of the driver of certificated vehicles.¹⁵¹

As to Stage 1, Rasier-PA proposes to provide coverage in the amount specified in the Commission's regulations of \$35,000, split in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.¹⁵² For Stages 2 and 3, when the operator is conducting commercial operations, Rasier-PA proposes to provide a "best in class" \$1 million of third party liability insurance at a combined single limit.¹⁵³ In

¹⁴⁸ N.T. 514-516, 662-663, and Applicant Exhibits 5 and 7.

¹⁴⁹ N.T. 586-587, 662-663.

¹⁵⁰ N.T. 515.

¹⁵¹ N.T. 662.

¹⁵² N.T. 515.

¹⁵³ N.T. 515, 565.

addition, Rasier-PA proposes to maintain a \$1 million in uninsured/underinsured coverage for bodily injury per incident.¹⁵⁴

Since Rasier-PA's proposal mirrors the Commission's requirement for Stages 2 and 3 in the *ETA Order*, Rasier-PA offered its ETA \$1 million insurance policy into the record of this proceeding.¹⁵⁵ As to Stage 1, however, Rasier-PA's proposal is different than the Commission's requirement in the *ETA Order*. Therefore, that policy has not yet been written and is not available, but if the Commission approves this proposal, Rasier-PA will secure the policy and its insurance carrier will file a new Form E Certificate of Insurance ("Form E").¹⁵⁶

The R.D. fails to appreciate the significance of a Form E being on file with the Commission, which certifies that a motor carrier has obtained required insurance coverage as required by the law of Pennsylvania, and Commission orders or regulations.¹⁵⁷ Mr. Fuldner explained that having the Form E on file with the Commission would require (or expand) the policy to pay amounts required in Commission orders regardless of any other policy language.¹⁵⁸

In addition, the R.D. finds that the insurance that Rasier-PA proposes cannot be truly evaluated without viewing the policy.¹⁵⁹ However, the Stage 2 and 3 policy was admitted into the record. As to the Stage 1 policy, the Form E provides that the insurer will provide a copy of the policy or policies at any time to the Commission, upon request.¹⁶⁰ As a result, the concerns raised in the R.D. about possible uncertainties regarding coverage and the need to view the exact language of the policies are fully addressed by the filing of a Form E by its insurer. As is normally the case, the Commission will have the ability to fully evaluate Rasier-PA's

¹⁵⁴ N.T. 515

¹⁵⁵ Applicant Exhibit 5 and 7, N.T. 578-579.

¹⁵⁶ N.T. 645.

¹⁵⁷ R.D. at p. 40.

¹⁵⁸ N.T. 645, 657-658.

¹⁵⁹ Finding of Fact No. 134.

¹⁶⁰ Applicant Exhibit 6.

compliance with conditions relating to insurance coverage following approval of the application.
52 Pa. Code § 3.381(e).

Further, the R.D. inaccurately describes Rasier-PA's current practices with respect to notifications to operators and wrongfully concludes that operators are not sufficiently educated about the coverage that is provided or how to submit claims.¹⁶¹ Specifically, the R.D. claims that Rasier-PA "does not propose to advise its drivers to check with their personal auto insurers about potential gaps in coverage or potential changes in or cancellation of their personal auto insurance policies, beyond stating at an undefined point and manner that their drivers' personal auto policies may not provide coverage."¹⁶² This sentence is completely inconsistent with Mr. Fuldner's testimony.

What Mr. Fuldner actually said about notifications to operators is that during the onboarding process, Rasier-PA currently advises operators as to various insurance-related items.¹⁶³ Specifically, Rasier-PA notifies operators that their personal insurance policy may not afford coverage under liability, comprehensive, collision, uninsured motorist, first party medical benefits or any other coverage in connection with their use of the platform.¹⁶⁴ Rasier-PA further requires the operators to acknowledge the notification that their personal automobile policy may not provide coverage.¹⁶⁵ In addition, Rasier-PA recommends that if operators have any questions about coverage, they should pursue those with their personal insurance carriers.¹⁶⁶ Rasier-PA also informs operators of the insurance that it provides.¹⁶⁷ Further, Rasier-PA advises

¹⁶¹ Findings of Fact Nos. 108, 112, 114, and 128-134.

¹⁶² R.D. at p. 38.

¹⁶³ N.T. 545-546.

¹⁶⁴ N.T. 535-536, 545.

¹⁶⁵ N.T. 536.539, 545.

¹⁶⁶ N.T. 538, 545.

¹⁶⁷ N.T. 537-538.

operators how to download evidence of insurance and instructs them to furnish such certificates or other evidence of Rasier-PA's insurance in the event of an accident.¹⁶⁸

Contrary to the findings in the R.D., these communications to operators provide sufficient information upon which they can make informed decisions about the need for and the content of their interactions with their personal insurers. Moreover, there is nothing to prevent insurers from asking questions of their insureds about their driving practices and whether they are operating on a ridesharing platform.

The R.D. also completely mischaracterizes the testimony of Mr. Fuldner on the issue of whether an operator had a policy with a livery exclusion would raise a concern. Specifically, the R.D. states that:

Further, Applicant does not propose to examine its drivers' personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those policies may be subject to termination or new rates if their insureds become Rasier drivers. Tr. 546-548, 651. This is despite the testimony of Applicant's witness that if a driver had a policy with a livery exclusion, that would raise a concern to Applicant. Tr. 677-678.¹⁶⁹

However, a review of the transcript reveals that the last sentence is taken completely out of context. Mr. Fuldner was being questioned about a hypothetical livery exclusion, which supposedly provides that no coverage is afforded if the vehicle is ever used for commercial purposes. Noting that he has never encountered such a livery exclusion, he acknowledged that if one existed, it would raise a concern. Nonetheless, he explained that the concern would be addressed by Rasier-PA's current practice of informing operators that there may not be coverage provided by their personal automobile policy and that they would need to investigate that.¹⁷⁰

¹⁶⁸ N.T. 549-550, 553, 586-587, 637, 663.

¹⁶⁹ R.D. at p. 39.

¹⁷⁰ N.T. 678.

With respect to the proposal advanced by the Insurance Federation that Rasier-PA require operators to notify their personal insurers that they are operating on the ridesharing platform and to maintain records of such notifications, Rasier-PA's position is that this requirement is inappropriate and unduly burdensome. While the R.D. makes findings of fact about Rasier-PA's proposal, it fails to address its merits.¹⁷¹

Given Rasier-PA's proposal to provide primary coverage, and only rely on an operator's own policy if it specifically recognizes the driver's use of the vehicle in for-hire transportation, Mr. Fuldner testified that there is no purpose in such a notification.¹⁷² He further noted that a personal automobile insurance policy is a private contract between the operator and their insurance company, to which Rasier-PA is not a party.¹⁷³ As such, it would be unduly burdensome to handle all the paperwork associated with imposing a notification requirement and maintaining records.¹⁷⁴ While Rasier-PA currently assumes the burdens of verifying and updating personal insurance coverage, these additional steps would mandate that Rasier-PA impose a requirement on the operators to contact their carriers, confirm that such notification has occurred and retain those records.¹⁷⁵ All of this would be done for no purpose since Rasier-PA does not propose to rely on that coverage.¹⁷⁶

Moreover, as Mr. Fuldner testified, such a requirement is not customary in other uses of personal automobiles in the course of business.¹⁷⁷ Specifically, he described a broad class of insurance known as "hired-and-non-owned auto coverage" that is sold to businesses covering

¹⁷¹ Findings of Fact Nos. 106-107. Rasier-PA M.B. at 33-35.

¹⁷² N.T. 516-517.

¹⁷³ N.T. 517.

¹⁷⁴ N.T. 517 and 540-541.

¹⁷⁵ N.T. 663

¹⁷⁶ N.T. 664.

¹⁷⁷ N.T. 517, 523, 664.

vehicles used in the course of that business but not owned by that business.¹⁷⁸ Pointing to ridesharing as one component of that class, Mr. Fuldner identified several other such industries that have existed for decades including home health care, real estate, pizza delivery, newspaper delivery and various volunteer services, which involve the use of a personal vehicle in the course of some other business.¹⁷⁹

As an example of such a policy, Mr. Fuldner referred to a filing made by the Great American Insurance Company with the Pennsylvania Department of Insurance.¹⁸⁰ This filing describes a product of Great American Insurance Company called Allied Health that is approved by the Pennsylvania Department of Insurance, which covers a variety of non-owned automobile exposures related to health care related businesses, such as home health care and services for various classes of disabilities, rehabilitation, and dietary and nutrition services.¹⁸¹ Although this insurance product specifically contemplates the use of personal automobiles to transport passengers in the course of the business of health care service, Mr. Fuldner testified that there is no requirement for a notification to be sent to personal insurance carriers in connection with this use or other uses of personal automobiles in the course of a business in the state of Pennsylvania.¹⁸² This is despite the fact that the product from Great American relies on the personal automobile policy to provide Pennsylvania financial responsibility benefits.¹⁸³

The R.D. also erroneously discusses issues that go beyond the Commission's jurisdiction and are strictly between an insurance company and its insured. Specifically, the R.D. contains findings of fact relating to the information that Rasier-PA provides to its insurer, James River

¹⁷⁸ N.T. 520.

¹⁷⁹ N.T. 520.

¹⁸⁰ Applicant Exhibit 4; N.T. 520-521.

¹⁸¹ N.T. 521.

¹⁸² N.T. 521-523.

¹⁸³ Applicant Exhibit 4, N.T. 626.

Insurance Company (“James River”), including driver and vehicle lists, and the impact of that information on the coverage that is provided.¹⁸⁴ James River is highly rated with a surplus of \$250 to \$500 hundred million dollars to protect its policy holders.¹⁸⁵ Further, James River approves a class of operators and a class of vehicles, establishes minimum standards for those operators and vehicles and relies on Rasier-PA’s processes to fully vet them for compliance with its standards.¹⁸⁶ In addition, James River charges Rasier-PA on a per mile basis, and therefore does not need a list of vehicles in order to measure its underwriting exposure or to calculate its premium in the same way that an insurer that sold insurance on a per vehicle year basis would. In fact, the per mile pricing allows James River to match the pricing more closely to the exposure that it must insure.¹⁸⁷ In any event, these are issues between James River and Rasier-PA that should be of no concern to the Commission.

E. Exception No. 5: The R.D. contains several inappropriate references to a “licensing agreement” between UTI and users of its software, which was never properly authenticated and has no bearing on the regulatory responsibilities of Rasier-PA.¹⁸⁸

The R.D. repeatedly refers to and relies on a document called a “licensing agreement” or the terms and conditions to which users agree when they download the UTI App to their smart phones, and raises concerns about limitation of liability provisions and the ability of users to pursue complaints with the Commission. These issues are red herrings and have no relevance to the pending application. The licensing agreement is a private contract between the user and UTI relating specifically to the use of the software.¹⁸⁹ It is well-established that the Commission has no jurisdiction to review private contracts. *See Allport Water Auth. v. Winburne Water Co.*, 393

¹⁸⁴ Findings of Fact Nos. 119, 120, 142-145, 151 and 152.

¹⁸⁵ Rasier-PA M.B. at 28.

¹⁸⁶ N.T. 617-618, 645.

¹⁸⁷ N.T. 629. Rasier-PA M.B. at pp. 32-33.

¹⁸⁸ Findings of Fact Nos. 23, 24, 25, 26, 27, 55, 56, 57, 58 and 59.

¹⁸⁹ JB Taxi Exhibit A.

A.2d 673, 675 (Pa. 1978); *David B. Lytle v. T.W. Phillips Gas & Oil Company*, 2002 Pa. PUC LEXIS 44. In any event, the terms are binding only to the extent allowed by law.¹⁹⁰

Moreover, as a private contract between UTI and its users for use of software, the licensing agreement has no bearing on the obligations and responsibilities that Rasier-PA owes to the Commission and the riding public, and is irrelevant to this proceeding. For instance, the Form E filed by James River certifies that Rasier-PA has insurance coverage “covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law...or the Commission orders or regulations promulgated in accordance therewith.”¹⁹¹ Further, as a certificated entity via the *ETA Order*, Rasier-PA is fully subject to the Commission’s jurisdiction and required to comply with requirements governing the processing and adjudication of consumer complaints about its operations in Pennsylvania.¹⁹² *See* 66 Pa.C.S. § 701.

F. Exception No. 6: Placing undue emphasis on the flexibility of Rasier-PA’s proposed tariff, the R.D. fails to appreciate the benefits of such a structure to the riding public and neglects to find that a prospective customer always knows the rate in advance and may obtain an estimate before booking the ride.¹⁹³

Despite making twelve findings of fact about Rasier-PA’s proposed tariff, the R.D. neglected to mention one of the most important provisions from the standpoint of a customer and the Commission. In the Schedule of Rates in the proposed tariff, Rule 2.4 provides: “In *all* situations, the prospective customer will be advised of the applicable rates being charged and *will have the option of receiving an estimated fare before booking the ride.*”¹⁹⁴ (emphasis added). Mr. Gore explained that this flexibility is important to balancing supply and demand, and also discussed surge pricing that is use at times of extreme demand. Consumers also know

¹⁹⁰ N.T. 128.

¹⁹¹ Applicant Exhibit 6.

¹⁹² N.T. 129, 132, 265-267, 274.

¹⁹³ Findings of Fact Nos. 62-73.

¹⁹⁴ Applicant Exhibit 3.


in advance of a trip if surge pricing is in effect and are free to find another form of transportation if they do not wish to pay the higher rates in that situation.¹⁹⁵ Although the R.D. does not suggest that the Commission reject the tariff, Rasier-PA is filing this exception to ensure that the Commission has accurate information regarding the proposal when reviewing the application.

V. **CONCLUSION**

WHEREFORE, on the basis of the foregoing, Rasier-PA LLC respectfully requests that the Commission grant these Exceptions, reverse the Recommended Decision of the Administrative Law Judges, and adopt an Order approving the application filed on June 2, 2014 to operate an experimental ridesharing network service between points in the Commonwealth of Pennsylvania, excluding designated counties.

Respectfully submitted,

Dated: October 14, 2014



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¹⁹⁵ N.T. 146-148, 270.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing : Docket No. A-2014-2424608
Approval to Operate an Experimental :
Ride-Sharing Network Service Between Points in :
the Commonwealth of Pennsylvania, Excluding :
Designated Counties :

CERTIFICATE OF SERVICE

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

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