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October 20, 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 Reply Exceptions of Rasier-PA LLC in the above-captioned matter.

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

Sincerely,

*Karen O. Moury / AMS*

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 :

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**REPLY EXCEPTIONS OF RASIER PA LLC**

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**Attorneys for Rasier PA LLC**

**Dated: October 20, 2014**

## **I. INTRODUCTION**

By these Reply Exceptions, Rasier-PA LLC (“Rasier-PA”) responds to the single Exception that was filed to the Recommended Decision (“R.D.”) issued by the Administrative Law Judges (“ALJs”) on September 25, 2014 by a party other than Rasier-PA. This lone Exception was filed by Mr. Michael Henry, Esquire on behalf of several Protestants including limousines, medallion taxicabs and non-medallion taxicabs based in Philadelphia and the surrounding area (collectively referred to as “Eastern PA Protestants”). Through their Exception, the Eastern PA Protestants challenge Conclusion of Law No. 7 in the R.D., which states: “It is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.” R.D. at p. 43.

In the R.D., the ALJs properly concluded that the ridesharing services proposed by Rasier-PA qualify as “experimental service” under Section 29.352 of the Commission’s regulations, 52 Pa. Code § 29.352. Noting that Section 29.352 “permits the Commission to approve a type of motor carrier service not currently contemplated by the regulations on a short-term basis,” the ALJs observed that this option gives the Commission or the General Assembly time to promulgate regulations or enact legislation to accommodate the proposed service. R.D. at p. 31. In this regard, the R.D. is consistent with the Commission’s earlier pronouncements in *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No. A-2014-2429993 (Order adopted July 24, 2014) (“*ETA Order*”), and *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (Order adopted May 22, 2014) (“*Yellow Cab Order*”), and, accordingly, the Commission should adopt Conclusion of Law No. 7.

This result is particularly appropriate given the compelling evidence introduced by Rasier-PA of the critical and immediate public need for ridesharing services and its fitness to

provide the proposed services. Approval of the 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 incorporates herein by reference its Exceptions filed on October 14, 2014 and Main Brief filed on September 15, 2014, which fully address the need for the proposed service and Rasier-PA's fitness to offer ridesharing services throughout the Commonwealth.

## **II. REPLY EXCEPTION TO EASTERN PA PROTESTANTS' EXCEPTION NO. 1**

By their Exception, the Eastern PA Protestants challenge Conclusion of Law No. 7, which states: "It is appropriate to consider the transportation service proposed by the Applicant under the Commission's experimental service regulation as a motor carrier." R.D. at p. 43. On that basis, the Eastern PA Protestants urge for denial of the application.

The thrust of the Eastern PA Protestants' argument is that the proposed service does not entail providing transportation of passengers and therefore does not meet the definition in Section 102 of the Public Utility Code ("Code"), 66 Pa.C.S. § 102, of a "common carrier."<sup>1</sup> The Eastern PA Protestants further contend that the proposed service does not fall under the definition of "broker" in Code Section 2501, 66 Pa.C.S. § 2501, because it does not contemplate the use of certificated motor carriers to provide the transportation.<sup>2</sup>

This argument presents a classic "Catch 22" situation, which is advanced by the Eastern PA Protestants solely for the purpose of avoiding competition. In previously granting experimental authority for similar services, the Commission has emphasized the importance of

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<sup>1</sup> Exceptions at pp. 2-5.

<sup>2</sup> Exceptions at pp. 10-12.

not allowing the existing regulatory framework to act as an impediment to the delivery of new and innovative options to the riding public. *See ETA Order* at 12 and *Yellow Cab Order* at 6.

Section 29.352 of the Commission's regulations provide that "[i]n order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate of an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service." 52 Pa. Code § 29.352. Certificates for experimental service are valid for two years, unless the Commission acts prior to that time to amend the regulations to provide for the new class of service. *Id.*

The Commission is granted great deference in interpreting and applying the statutory provisions that it is charged to administer. *See PPL Electric Utilities Corporation v. Pa. Public Utility Commission*, 912 A.2d 386, 400 (Pa. Cmwlth. 2006) (and cases cited therein). Exercising its discretion to interpret and apply the definition of common carrier in Code Section 102, the Commission has properly determined that it covers the proposed service because it involves the transportation of persons. As the Commission has explained, Rasier-PA "will arrange the transportation between operator and passenger, determine the appropriate charge for the transportation, provide insurance coverage for the transportation, ensure the transportation is provided safely, and ensure that the transportation is provided satisfactorily to the consumer." *ETA Order* at p. 11.

In the Commission's first order granting an applicant experimental authority to offer ride-sharing network services, also referred to as transportation network services, it recognized that the proposed services do not squarely fit within the specified categories under the existing regulations, including scheduled route service, call or demand service, group and party service, limousine service, airport transfer service, and paratransit service. 52 Pa. Code §§ 29.301-

29.356. *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (Order adopted May 22, 2014) (“*Yellow Cab Order*”). Noting that each of those types of passenger services has unique characteristics that define the particular transportation model, the Commission found that it was necessary and appropriate to use the experimental service classification in the regulations to accommodate transportation network services. *Id.* at 6.

Distinguishing features of ridesharing services on which the Commission has relied include operators using their own vehicles to provide transportation service and the use of an “App-based technology” to arrange for the transportation, which will “allow for a wider ranging, faster and more user-friendly scheduling of transportation services.” *ETA Order* at p. 12. Rasier-PA’s witness, Mr. Gore, provided additional justification for classifying ridesharing as experimental service. 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.”<sup>3</sup> Further, noting that it is more than the manner of hail that distinguishes them, he explained that the rider has an account with a valid credit card, along with a user rating if he or she has used the App before.<sup>4</sup> Also, operators are available to provide rides to people in their community,<sup>5</sup> and the platform is designed to increase reliability by providing incentives to accept ride requests.<sup>6</sup> Further, Mr. Gore testified that the rider knows who is coming, what type of vehicle the operator will be driving and when the operator will arrive. The rider also knows they will be able to provide feedback and will receive an electronic record of the trip, giving them an

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<sup>3</sup> N.T. 66.

<sup>4</sup> N.T. 216.

<sup>5</sup> N.T. 67, 543.

<sup>6</sup> N.T. 268.

ability to track down any lost items. At the heart of the proposal is giving the customer a choice.<sup>7</sup>

The proposed service is clearly a classic example of a situation where technology has gotten ahead of regulations. The Commission properly observed in the *Yellow Cab Order* that:

We are cognizant that in this era of rapid development of technological advances, the traditional regulatory framework may not fit neatly the potential transportation changes effected by those developments...Moreover, it is incumbent upon the Commission to ensure that the regulatory structure is not a barrier to desirable changes in the transportation industry advanced by changes in technology.

*Id.* at 6.

Technological advancements pave the way for consumers to gain access to better services and products. It is appropriate for the Commission to exercise its discretion under the regulations to use a tool that is available to make a new and innovative product or service available to consumers. This is particularly true that when the product or service revolutionizes the way the riding public accesses transportation and is responsive to the demands the riding public.

In the R.D., the ALJs followed the Commission's earlier pronouncements and properly concluded that the ridesharing services proposed by Rasier-PA qualify as "experimental service" under Section 29.352 of the Commission's regulations, 52 Pa. Code § 29.352. Noting that Section 29.352 "permits the Commission to approve a type of motor carrier service not currently contemplated by the regulations on a short-term basis," the ALJs observed that this option gives the Commission or the General Assembly time to promulgate regulations or enact legislation to accommodate the proposed service. R.D. at p. 31.

Therefore, the Commission should adopt Conclusion of Law No. 7. This result is particularly appropriate given the compelling evidence introduced by Rasier-PA of the critical

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<sup>7</sup> N.T. 66-67.

and immediate public need for ridesharing services and its technical and legal fitness to provide these services.<sup>8</sup> Approval of the 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.


The record establishes that Pennsylvanians need and want the services proposed by Rasier-PA. Moreover, Rasier-PA has already fulfilled the Commission's directives regarding driver integrity, vehicle safety and adequate liability insurance. The Commission should grant Rasier-PA an experimental license so that consumers are not deprived of the safe, affordable and reliable transportation alternatives they are demanding.

### **III. CONCLUSION**

WHEREFORE, on the basis of the foregoing, Rasier-PA LLC respectfully requests that the Commission deny the Exception filed by the Eastern PA Protestants.

Respectfully submitted,

Dated: October 20, 2014

  
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<sup>8</sup> Rasier-PA M.B. at 17-22 and 25-45.

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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).

**Via First-Class Mail**

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Dated this 20<sup>th</sup> day of October, 2014.



Karen O. Moury, Esq.