

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT RESPONSIVE EXCEPTIONS OF PROTESTANTS TO APPLICANT'S EXCEPTIONS**

**AND NOW COMES**, Joint Protestants, Keystone Cab Service, Inc., EZ Taxi, LLC, Good Cab, LLC and United Cab, LLC, (Protestants) by and through their attorney, Justine L. Pate, Esq. and submit this Response to Rasier-PA, LLC's Exceptions.

**INTRODUCTION**

The Administrative Law Judges (ALJs) correctly recommended that the Application of Rasier-PA, LLC (Applicant, Rasier-PA), a wholly-owned subsidiary of Uber Technologies, Inc. (Uber), to begin Experimental Ride-Sharing Network Service Between Points in the Commonwealth of Pennsylvania, Excluding Designated Counties, be denied. Protestants incorporate their Main Brief (MB) filed on September 15, 2014 herein by reference.

The ALJ's correctly found that Applicant has failed to meet its burden under 52 Pa Code §41.14. Rasier-PA, LLC is currently providing ride-sharing between points in Allegheny County, pursuant to a grant of emergency temporary authority by the Commission, however, Rasier, LLC, another subsidiary of Uber, with the same CEO as Rasier-PA, LLC, had been operating in Allegheny County without Commission authority.

## **BACKGROUND AND PROCEDURAL HISTORY**

On June 2, 2014 Applicant filed an Application for a certificate of public convenience to operate an experimental ride sharing network service between points in the Commonwealth of Pennsylvania, excluding points originating or terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union. Protestants filed timely Protests and evidentiary hearings were held on August 18 and 19<sup>th</sup>, 2014 and September 9, 2014.

## **SUMMARY OF RESPONSE TO EXCEPTIONS**

The ALJ's correctly decided to deny the Application of Rasier-PA, LLC. Applicant argues that the Recommended Decision (RD) disregards 'mountains' of evidence, however, a review of the transcript will show that virtually little to no evidence was actually put onto the record by the Applicant. The witness for the Applicant, Matthew Gore, danced around providing answers for much of the hearing, and was unable to answer questions regarding exhibits entered into evidence, such as Applicant's balance sheet and tariff. Moreover, Applicant produced three witnesses whom are residents of Pennsylvania to testify as to the need for the service. Three witnesses to show need for the entire state of Pennsylvania cannot be considered a mountain of evidence by the Commission.

## **REPLY EXCEPTIONS**

**REPLY EXCEPTION No. 1:** The ALJs did not ignore the compelling evidence, rather the ALJs found that the compelling evidence in this matter demonstrated that Applicant did not meet the criteria of 52 Pa Code §41.14.

Applicant presented four witness with regard to Applicants state-wide Application: Sally Guzik, whom uses Uber in Allegheny County, Ms. Gonzalez-Bartolli whom has used Uber while in California,

and Ms. Lori Sergent whom has never used Uber nor a taxi service, and Mr. Bashin whom has never used Taxi service or Uber services in the state of Pennsylvania. Applicant has filed a statewide Application. Applicant presented need testimony of four people; three of those witnesses reside in the Commonwealth. There has been no demonstrative need in the counties Dauphin, Lebanon, Adams, York, Lancaster, Cumberland, Berks, nor Bucks, not a single witness. Assuming that such witness testimony is enough to persuade the Commission to find that a need exists, it is not enough basis for the Commission to overturn the Recommended Decision of the ALJs. Applicant must meet all of the criteria of 52 Pa Code §41.14.

**REPLY EXCEPTION No. 2:** Applicant did not meet its burden of demonstrating that it is technically and financially fit to operate.

Applicant cites to a mountain of evidence in the record demonstrating Rasier-PA's fitness to provide the service; in reality many of the questions asked at the evidentiary hearings were answered with a simple "I don't know". For example, when asked about the Pittsburgh office team, Applicant testified as follows:

A: ...The team travels to Pittsburgh at various times to conduct their business. There are additionally sometimes temporary workers who are contracted through third parties who may also be based in Pittsburgh.

Q: And would they be involved in screening operators?

A: I don't know if they are currently being utilized to screen operators

Q: How about inspecting vehicles?

A: I don't know if they're being used to inspect vehicles currently

When asked about the number of operators contracted with Rasier, the Applicant answered as follows:

A: I don't know how many are currently contracted with Rasier

Q: Do you know if there are any?

A: I know that there are some, yes.

Q: And are they also contracted with Rasier-PA LCC?

A: To the best of my understanding, they're not, but I'm not involved in the contract preparation

Q: Who is?

A: Someone who does contracts for our company

Q: Do they have an office in Pennsylvania

A: I don't believe so, no. I believe –

Q: Are they ever in Pennsylvania

A: I can't testify to where they ever are. N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 112.

When asked about a financial statement offered into evidence,  
the Applicant testified as follows:

Q: And do you have any understanding how operating revenues are projected?

A: I do not. I was not party to the preparation of this.

Q: Who was?

A: My understanding is the finance and accounting team for Uber Technologies, but I don't know specifically who was. N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 142.

When asked about the parent company, Uber Technology, Inc.'s penchant for creating wholly owned subsidiaries, the witness testified as follows:

Q: Now, When was Rasier-,PA LLC formed?

A: I don't know

Q: Do you know, why didn't --was there an internal decision made within Uber regarding Rasier, LLC filing an application?

A: I'm not sure I understand the question

Q: Well, why didn't Rasier, LLC file an Application?

A: I don't know the answer to that question. N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 206.

When asked about the financial balance sheet again, the Applicant testified as follows:

Q: what is included in your legal expense?

A: I don't know.

Q: OK. What is included in your general office expense?

A: I don't know.

Q: What is included in the advertising expense and marketing?

A: I don't know.

Q: What is included in the materials and supplies expense?

A: I don't know

Q: So I'm assuming the bottom line is the answer is going to stay the same for total operating expense?

A: That's correct N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 236.

When asked about how fares would be displayed to customers, the Applicant testified as follows:

Q: How would a customer know if it's a flat fee or by time or distance.

A: That would be advertised on our website if there were specific flat fees in that area.

Q: When you say on your website, would that also be advertised on your mobile app?

A: I can't say because we don't have in my current area. N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 238.

The Applicant later testified:

Q: What's the margin of error on your estimated fares?

A: I don't know the answer to that question

Q: Who would know the answer to that question

A: I don't know the answer to that question. N.T. 8/18/14 (Cross Examination of Matthew Gore)p. 297-298.

When asked about the 'tariff' supplied by the Applicant, the Applicant testified as follows:

Q: The tariff that you filed has no information upon which anyone can make an evaluation as to whether or not the rates are just and reasonable; is that correct?

A: That's correct. N.T. (Cross examination of Matthew Gore) p. 290.

A review of the record will demonstrate that Applicant is not technically nor financially fit to operate its proposed service.

**REPLY EXCEPTION NO. 3:** Applicant has failed to show that Applicant can operate safely and legally.

To support a finding that an applicant lacks the propensity to operate legally, the evidence, 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 t/d/b/a Classic Limousine Transportation*, Docket No, A-00112166 (Ordered September 24, 1996).

Applicant argues that the continued operation of Applicant's sister company, Rasier, LLC during a cease and desist order is forgivable because Applicant continued operations did not want to end operations. In fact, the entire argument of Applicant regarding its propensity to operate legally can be summed up as “we do what we want to do”. Applicant seems to believe that “substantial compliance” with the ETA means a barely decipherable tariff and inadequate insurance.

The ALJs also granted a motion to dismiss the Application based on Applicant's inability to comply with a Commission Order. Applicant was asked by an Order and at the evidentiary hearings to provide:

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

- (a) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
- (b) From the receipt of the cease and desist letter from the Commission's Bureau of Technical Utility Services dated July 6, 2012, to June 5, 2014;
- (c) From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
- (d) From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.

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

The Applicant refused to answer those questions at the evidentiary hearings. The ALJs found, "Applicant's conduct in this proceeding is a willful disregard of the direction of the presiding officers. To permit the Applicant to disregard an order of the administrative law judges, when a remedy was available, would destroy the effectiveness of Commission proceedings and undermines the due process rights of the other parties to the proceeding." *See, Recommended Decision, A-2014-2416127, 9/25/14.*

When evaluating the propensity of this Applicant to operate legally, the Commission should easily find that Applicant has given the Commission no reason to believe it will act with any respect toward the authority of the Commission.

**REPLY EXCEPTION NO. 4: Applicant's insurance is inadequate**

The ALJ's found, and the Applicant raises no dispute that "A personal automobile insurer would want to be informed if its insured has become a driver with Applicant, as it is a different risk than what was originally underwritten and rated. It is something that was not

contemplated when the policy was issued. Therefore, it changes the nature of the risk that the driver presents.” *See, Recommended Decision, A-2014-2416127, 9/25/14.*

Along with the mountains over other evidence Applicant failed to produce, Applicant did not produce, the Applicant also failed to produce the insurance policy as a whole. The ALJs found, “The controlling document, when evaluating coverage, is the policy, however, one cannot truly evaluate the insurance that the Applicant proposes without seeing the actual policy language itself. The actual policy language was not provided by Applicant.” *See, Recommended Decision, A-2014-2416127, 9/25/14.*

**REPLY EXCEPTIONS NOS. 4 and 5:** With regard to Applicant's Exceptions regarding its licensing agreement and tariff, I respectfully point the Commissioners to the following testimony offered at hearing regarding the licensing agreement, which every one of Applicant's customers is subject to:

When presented with a web page from the Application's home page Mr. Gore testified, “I'm not intimately familiar with the home page” and “I'm not familiar with the licensing terms”. *Id.* At 90.

With regard to the tariff, the following discussion took place:

Q: The tariff that you filed has no information upon which anyone can make an evaluation as to whether or not the rates are just and reasonable; is that correct?

A: That's correct. N.T. (Cross examination of Matthew Gore) p. 290.

## **CONCLUSION**

WHEREFORE, on the basis of the foregoing reply exceptions, Protestants respectfully request the Commission deny Applicant's Exceptions, uphold the Recommended Decision, and issue an order denying the Application.

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