# PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 13, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman, Dissenting Statement

James H. Cawley

Pamela A. Witmer

Gladys M. Brown, Statement

Application of Rasier-PA LLC, a limited liability A-2014-2416127

company of the State of Delaware, for the right to

begin to transport, by motor vehicle, persons in the

experimental service of shared-ride network for

passenger trips between points in Allegheny County

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following: the application of Rasier-PA LLC (Rasier-PA or Applicant) for authority to operate as a motor common carrier of persons in experimental service between points in Allegheny County (Application) filed on April 14, 2014; and the Exceptions of Rasier-PA filed on October 10, 2014, to the Recommended Decision of Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson, issued on September 25, 2014, denying the Application.[[1]](#footnote-1) On October 20, 2014, JB Taxi LLC (JB Taxi) and the Insurance Federation of Pennsylvania (Insurance Federation)[[2]](#footnote-2) filed Replies to Exceptions. Also on October 20, 2014, counsel for Concord and Executive filed a letter stating that his clients join in and concur with the Replies to Exceptions filed by JB Taxi. For the reasons set forth below, we shall grant, in part, Rasier-PA’s Exceptions; reverse the Recommended Decision, and grant the Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted, consistent with this Opinion and Order.

# Procedural History

On April 14, 2014, Rasier-PA filed an application for motor common carrier of persons in experimental service between points in Allegheny County, Pennsylvania (Application).[[3]](#footnote-3) In its Application, Rasier-PA stated as follows:

Applicant proposes to operate a ride-sharing network service for passenger trips between points within Allegheny County, Pennsylvania.

Applicant proposes to use a digital platform to connect passengers to independent ride-sharing operators (“Operators”) with whom Applicant intends to contract. Operators will use their personal, noncommercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the Uber technology to generate leads from riders who need transportation services. Applicant does not own vehicles, employ drivers or transport passengers.

Application at 2-3.

Notice of the Application was published in the Pennsylvania Bulletin on April 26, 2014 at 44 *Pa*. *B*. 2604. The notice provided that the deadline for filing protests was May 12, 2014.

On May 7, 2014, JB Taxi filed a protest and a petition to intervene. The Applicant filed Preliminary Objections on June 2, 2014, which sought dismissal of the protest, averring that JB Taxi lacked standing to protest the application. On June 13, 2014, JB Taxi filed an Answer to the Preliminary Objections. By Initial Decision issued July 1, 2014, ALJs Long and Watson dismissed the protest of JB Taxi and denied its Petition to Intervene. JB Taxi filed Exceptions to this Initial Decision on June 23, 2014. By Opinion and Order entered August 15, 2014, the Commission granted JB Taxi’s Exceptions and reversed the dismissal.

On May 12, 2014, Concord and Executive filed protests to the Application. On June 2, 2014, the Applicant filed Preliminary Objections which sought dismissal of the protests. Concord and Executive filed Answers to Preliminary Objections on June 12, 2014. By Interim Orders issued July 1, 2014, ALJs Long and Watson issued Interim Orders denying the Preliminary Objections to the protests of Concord and Executive. The Applicant filed a Petition for Interlocutory Review and Answer to Material Question before the Commission on July 11, 2014. By order issued July 24, 2014, the Commission declined to answer the material question, but directed the ALJs to issue a Recommended Decision no later than September 25, 2014.[[4]](#footnote-4)

On May 12, 2014, the Pennsylvania Association For Justice (PAJ) and the Insurance Federation filed protests to the Application. On June 2, 2014, the Applicant filed Preliminary Objections which sought dismissal of the protests. The Applicant sought the dismissal of the protests averring that neither the Insurance Federation nor PAJ established the requisite standing to protest the Application. On July 1, 2014, the ALJs issued an Initial Decision dismissing the Protests of the Insurance Federation and PAJ. On July 16, 2014, the Insurance Federation filed Exceptions to the Initial Decision which dismissed its protest. By Opinion and Order dated August 15, 2014, the Commission granted the Exceptions and reversed the dismissal.

On July 31, 2014, ALJs Long and Watson issued an Interim Order directing the Applicant to provide certain trip data for the record in this proceeding. The ALJs based this directive on the Commission’s July 24, 2014, Order for Interim Emergency Relief in connection with enforcement proceedings initiated against the Applicant’s parent company, Uber Technologies, Inc. (Uber).[[5]](#footnote-5)

The *Uber Order* directed Uber to immediately cease and desist from utilizing its digital platform (App) to facilitate the transportation of passengers until it secured the proper authority from the Commission. Concurrent with the *Uber Order* Commissioner James H. Cawley issued a Statement requesting the issuance of a Secretarial Letter seeking additional information to aid in the formulation of the final Order in the enforcement proceedings against Uber at *Pa. PUC, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (*Uber Complaint Proceeding*). Following the issuance of the Secretarial Letter on July 28, 2014, the ALJs determined that the information requested in the Secretarial Letter was also important to the development of the record in this application. Accordingly, by Interim Order dated July 31, 2014 (*Interim Order*), the ALJs directed the Applicant to present evidence related to the following information at the hearing in these proceedings:

1. 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:
2. From the initiation of Uber’s service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
3. 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;
4. From June 5, 2014, to July 1, 2014 (the date the [*Uber*] *Order* became effective); and
5. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
6. 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.
7. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

Combined evidentiary hearings for this proceeding and the Statewide Application, were held on August 18-19, 2014, and September 9, 2014. Rasier-PA was represented by counsel and presented six witnesses and seven exhibits, which were admitted into the record. The Insurance Federation was represented by counsel and presented one witness. Counsel for Concord and Executive presented the testimony of three witnesses. JB Taxi was represented by counsel; its counsel did not present witness testimony, but offered one exhibit, which was admitted into the record.[[6]](#footnote-6)

The hearing resulted in a transcript of seven hundred and thirty-five pages. Each Party filed a brief and the record was closed by Interim Order issued September 18, 2014.

During the hearing, the Applicant objected to the provision of the information required in the *Interim Order* arguing that the trip data was highly confidential and proprietary, was not relevant to the proceeding and invoked a Fifth Amendment right against self-incrimination. Counsel for the Applicant instructed her witness to not answer each question posed from the *Interim Order*. Subsequently, counsel for some Protestants in the Statewide Application made an oral Motion to Dismiss the Application for failure to comply with the ALJs’ Order. The ALJs held the ruling on the Motion in abeyance and provided the Parties an opportunity to brief their positions. The Applicant filed its brief in opposition to dismissal on September 12, 2014; the Protestants filed their Reply Briefs on September 15, 2014.

The Recommended Decision, issued on September 25, 2014, determined that the Applicant did not provide the trip data enumerated in the *Interim Order*. The ALJs also found that the Applicant did not seek redress from the *Interim Order* or seek a protective order. Concluding that the Applicant’s conduct obstructed the orderly conduct of the proceeding and was inimical to the public interest pursuant to 52 Pa. Code   
§ 5.245(c),[[7]](#footnote-7) the ALJs dismissed the Application.

As previously discussed, the Applicant filed Exceptions on October 10, 2014; and various Protestants filed Replies to Exceptions on October 20, 2014.

# Related Application Proceedings

On June 2, 2014, Rasier-PA filed its Statewide Application requesting authority to operate experimental service between points in Pennsylvania, but excluding trips which originate or terminate at points in certain counties.[[8]](#footnote-8) By Recommended Decision issued on September 25, 2014, ALJs Long and Watson dismissed the Statewide Application due to Rasier-PA’s failure to meet its burden of proof pursuant to 52 Pa. Code to comply with 52 Pa. Code § 41.14, which is the Commission’s statement of policy pertaining to the evidentiary criteria used to decide motor carrier applications. As a result, the ALJs denied the Statewide Application. Statewide Application R.D. at 43-44. By Opinion and Order issued commensurate with this Opinion and Order, the Commission, among other things, reversed the ALJs and acted to grant the Statewide Application subject to compliance with certain terms and conditions before Experimental Service Authority is granted.

On July 2, 2014, Rasier-PA filed an application for Emergency Temporary Authority (ETA) to operate experimental transportation network service between points in Allegheny County. On July 24, 2014, the Commission approved the application contingent upon the Applicant meeting specific insurance and tariff requirements. *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., For Emergency Temporary Authority to Operate An Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2429993 (Order entered July 24, 2014) (*July 2014 ETA Order*). Pursuant to 52 Pa. Code § 3.383(b)(4)(i), an ETA is valid only for an initial period not to exceed sixty days.

On September 23, 2014, Rasier-PA filed a Petition for Extension of the ETA and, on October 3, 2014, filed a Petition for Modification of the *July 2014 ETA Order*. As to the modification request, Rasier-PA sought to eliminate the provision in the *July 2014 ETA Order* requiring all of its operators/drivers to notify their insurers, in writing, of their intent to operate in Rasier-PA’s service. According to the Applicant, the notice requirement is unduly burdensome and unnecessary. On October 17, 2014, we granted the Applicant’s request to extend its ETA until the Commission issues a final determination on its experimental authority application.[[9]](#footnote-9) However, we denied the Petition for Modification finding that Rasier-PA did not provide any colorable justification to eliminate the notice requirement which we determined to be a reasonable public safety and driver protection benefit. *October 2014 ETA Order* at 4-5.

# Discussion

The pervasive use of smart phones and the Internet in our society has revolutionized various sectors of our economy.  One such example is the creation of Transportation Network Companies (TNCs).  TNCs are altering the space traditionally occupied by taxicabs and the difference is much more than reinventing dispatch methods.  The most fundamental change between TNCs and traditional taxicab service is the contractual use of private, personal vehicles and drivers to carry passengers, rather than ownership of vehicle fleets by the certificate holder.  This innovative use of the public space should be encouraged in a way that is consistent with the Commission’s mission to both protect the public interest and foster new technologies.

The Application before us is a request for motor carrier service under our experimental service Regulation. 52 Pa. Code § 29.352. This Regulation permits the Commission to approve a type of motor carrier service not currently contemplated by our Regulations on a short-term basis. During the certificate term, we have the discretion to grant the certificate holder time to concretely demonstrate that the service is beneficial to the public and can be operated safely. Further, the Regulation affords the certificate holder the opportunity to demonstrate that it will comply with the regulatory authority of the Commission.

As discussed below, we will reverse the Recommended Decision and consider the merits of the proposed service pursuant to the record evidence presented at the hearings. In light of the evidence of need established by Rasier-PA, we will exercise our discretion to approve the Application subject to the conditions and requirements, set forth in Appendix A and discussed in this Opinion and Order. As our guiding principle, we want to ensure that the provision of service is done in a safe manner with appropriate insurance coverage. We believe that this goal can be achieved under this proposal with the conditions and provisions required in this Opinion and Order. Additionally, we believe that this proposal will also serve our goal of ensuring availability of service. If Rasier-PA fails to comply with any of the terms of this Opinion and Order, the Commission will not hesitate to take appropriate enforcement action.

Subject to the terms and conditions discussed below, we believe that this innovative type of transportation service can be of great benefit to the traveling public and should be certificated by the Commission. Given the myriad of differences between TNCs and the traditional taxicab industry, we do so on the basis of experimental authority, which grants operating rights for two years. This two-year time frame is appropriate given the dynamic and evolving nature of the TNC business model.

Most of the conditions we adopt largely mirror our Regulations and Rasier-PA’s existing operating practices, such as vehicle inspection, driver background checks, zero tolerance for drug and alcohol use while operating a vehicle, and insurance, as well as other aspects of Rasier-PA’s proposed business model. Consistent with our ability to set appropriate parameters for experimental service, we also waive certain Regulations that are not applicable to the TNC business model.

The ALJs made four Findings of Fact and reached two Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## Legal Standard

Pursuant to Section 1103(a) of the Public Utility Code (Code), 66 Pa. C.S. § 1103(a), this Application should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” In order to make these determinations on traditional common carrier applications, the Commission, in a policy statement promulgated at Section 41.14 of the Pa. Code, set forth the criteria to be taken into consideration. [[10]](#footnote-10) In an application for experimental service however, there is no requirement that all of these factors need to be strictly met in order to obtain a Certificate of Public Convenience since Section 29.352 of our Regulations allows the Commission to both require additional regulations or requirements and waive regulations that do not apply to the Experimental Service described in an application. Nevertheless, we believe it prudent to at least consider these standards as part of our evaluation here.

These factors, found at 52 Pa. Code § 41.14, are:

§ 41.14. Evidentiary criteria used to decide motor common carrier applications--statement of policy.

(a)An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service. In addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. In evaluating whether a motor carrier applicant can satisfy these fitness standards, the Commission will ordinarily examine the following factors, when applicable:

(1) Whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.

(2) Whether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.

(3) Whether an applicant has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public.

(4) Whether the applicant has an appropriate plan to comply with the Commission’s driver and vehicle safety regulations and service standards contained in Chapter 29 (relating to motor carriers of passengers).

(5) An applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.

(6) Whether an applicant or its drivers have been convicted of a felony or crime of moral turpitude and remains subject to supervision by a court or correctional institution.

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.

(d) Subsections (a) and (c) do not apply to an applicant seeking authority to provide motor carrier of passenger service under §§ 29.331--29.335 (relating to limousine service.)

The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote healthy competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” *In Re: Blue Bird Coach Lines, Inc.,* 72 Pa. P.U.C. 262, 274 (1990) (*Blue Bird*).

Thus, in order to approve an application for a Certificate, the Commission must find that an applicant has sustained its burden of proving, by substantial evidence, a public demand or need for the service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally. The Protestants also bear a burden of proof. To defeat an application, a protestant must show that the entry of the applicant into the transportation market would endanger or impair the operations of existing common carriers to the extent that it would be contrary to the public interest. 52 Pa. Code

§ 41.14(c). As we discussed in *Blue Bird*, “[o]nly the threat of unrestrained and destructive competition which is inimical to the public interest precludes the grant of an application pursuant to subsection 41.14(c).” 72 Pa. P.U.C. at 286.

In *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## Dismissal of the Application

### 1. Recommended Decision

As discussed, *supra*, the Commission issued a Secretarial Letter to Uber requesting specific transaction and ride information related to the *Uber Complaint Proceeding*. The ALJs determined that the information requested in the Secretarial Letter was also important to the development of the record in this Application. Accordingly, by their *Interim Order*, the ALJs directed the Applicant to provide the information for submission to the hearing record in these proceedings. R.D. at 5.

The ALJs explained that the Applicant did not file any motion for protective order, seek redress from the Commission, or otherwise signal that it objected to the production of the information. The ALJs noted that the first time the Applicant objected to the provision of the information was during the August 18, 2014, hearing. The ALJs submitted that the Applicant offered no justification for failing to comply with the *Interim Order*, but instead simply argued that the trip data was highly confidential and proprietary. The ALJs stated that, thereafter, the Applicant’s counsel instructed her witness to not answer each question posed from the *Interim Order*. R.D. at 6 (citing Tr. at 252-254).

The ALJs noted that the Applicant was thereafter directed to return the following day with a legal justification for refusing to comply with the *Interim Order*. The ALJs explained that the Applicant did not provide any justification for failing to file a motion for protective order or otherwise provide the presiding officers or opposing counsel with any notice in advance of the hearing that it did not intend to comply with the Order. Instead, the ALJs observed, the Applicant merely reiterated its position that the material was confidential and proprietary, was not relevant and invoked a Fifth Amendment right against self-incrimination. The ALJs also explained that, following further legal argument by the parties, Rasier-PA’s witness Mr. Matthew Gore again declined to answer the questions based on the advice of counsel and stated that he was not authorized to provide the information. The ALJs reported that the Applicant had no other witness available who would have been authorized to answer the questions posed in the July 31, 2014 Order. R.D. at 7 (citing Tr. at 332-333).

The ALJs proffered that 52 Pa. Code § 5.245(c) authorizes the presiding officer to dismiss an application when a party obstructs the orderly conduct of a hearing. The ALJs found that the Applicant’s conduct in this matter is similar to a willful failure to comply with discovery. The ALJs stated that, in those situations, the Commission has not hesitated to dismiss a complaint or an application. The ALJs submitted that the failure to comply with the rules of discovery directly affects the due process rights of the promulgating party and therefore prevents orderly and fair litigation. R.D. at 7-8 (citing *Nippes v. PECO Energy Co.,* Docket No. C-2013-2363324 (Initial Decision issued August 20, 2014; Final Order entered September 30, 2013)). Furthermore, the ALJs noted that, on more than one occasion, the Commission has dismissed a transportation application when the applicant has refused to comply with the discovery rules and orders from the ALJ enforcing them. R.D. at 8 (citing *e.g. Application of Pickups Moving Company, LLC*, Docket No. A-2013-2372121 (Initial Decision issued February 4, 2014, Final Order entered March 17, 2014)). The ALJs observed that in other contexts as well, the Commission has held that the orders of an ALJ must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. R.D. at 8 (citing *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006)).

The ALJs stated that the Applicant had several more appropriate remedies at its disposal to deal with its objection to the *Interim Order,* such as a Motion for a Protective Order of its alleged proprietary information, or it could have sought interlocutory review of the *Interim Order* from the Commission.

The ALJs found that the Applicant’s conduct in this proceeding is a willful disregard of the direction of the presiding officers. The ALJs opined that, 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. The ALJs also projected that, given the Applicant’s refusal to submit to the Commission’s judicial authority, it is highly unlikely that the Applicant intends to comply with the Commission’s regulatory authority. Therefore, the ALJs recommended that the Application be dismissed. R.D. at 8-9.

### 2. Exceptions

Rasier-PA filed two Exceptions to the Recommended Decision. Each of the Exceptions will be addressed in turn, *infra,* together with Reply Exceptions submitted by JB Taxi.

#### Compelling Evidence of Need and Fitness

Rasier-PA argues that the Commission should reverse the Recommended Decision because it completely ignores the compelling evidence of a critical need for ridesharing in Allegheny County and Rasier-PA’s fitness to provide the proposed service. Rasier-PA recommends that the Commission adopt an order approving the Application so that the riding public can continue to have access to this safe, affordable, and reliable transportation. Rasier-PA submits that in view of the immediate need for the proposed service and the overall benefits of ridesharing to the public, outright dismissal of the Application without consideration of its merits is wholly inappropriate. Rasier-PA Exc. at 4.

Rasier-PA states that the Commission has recognized the immediate need for transportation network services in Allegheny County in approving the ETA Application by the *July 2014 ETA Order*. Rasier-PA points out that in the *July 2014 ETA Order*,the Commission stated, *inter alia*, that “there is an immediate need for this experimental service” proposed by Rasier-PA, noting that the verified supporting statements submitted with the Application demonstrated “the inadequacy of existing transportation service in Allegheny County.” Rasier-PA Exc. at 5 (citing *July 2014 ETA Order* at 13).

Rasier-PA avers that, based on the critical need for the transportation network services proposed by Rasier-PA, coupled with Rasier PA’s evidence related to driver integrity, vehicle safety and liability insurance, the Commission should approve the Application so that these services can continue for a period of up to two years. Rasier-PA Exc. at 6

In reply to Rasier-PA Exceptions, JB Taxi urges the Commission to reject the Applicant’s suggestion that public need, assuming it has been demonstrated, would ever justify a grant of permanent authority without addressing the other requirements of the Code. JB Taxi explains that Commission proceedings to evaluate a request for permanent authority have always conformed to the standard of the enabling legislation, which requires a showing that an applicant’s proposal is necessary or proper for the accommodation of the public. JB Taxi R. Exc. at 4 (citing 66 Pa. C.S. § 1103(a)). JB Taxi submits that, with respect to passenger transportation services, such a showing customarily includes the elements set forth by the Commission’s policy which specifically includes aspects of the proposed operations going beyond public need, such as a showing of fitness. JB Taxi R. Exc. at 4 (citing 52 Pa. Code § 41.14(b)). In addition, JB Taxi avers that the Commission should not conclude that its inquiry is concluded once an applicant demonstrates a need. *Id.* at 4.

#### Highly Proprietary Information that is Irrelevant to this Proceeding

Rasier-PA argues that the Recommended Decision should be reversed because the outright dismissal of the Application is not warranted for failure to comply with an Interim Order of the ALJs that sought the production of highly proprietary information. Rasier-PA submits that it is inappropriate to penalize Rasier-PA, its operators and the riding public in Allegheny County for Rasier-PA’s exercise of legal rights to guard against the disclosure of its highly proprietary trip data to the government, its competitors and possibly the public, particularly when that information is wholly irrelevant to the pending proceeding. Rasier-PA Exc. at 6-7.

Rasier-PA explains that a particular concern regarding the written disclosure of this proprietary data is the broad scope of Pennsylvania's Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*,which creates a rebuttable presumption that records supplied to a Commonwealth agency are public records, and the inevitable request for such information. Rasier-PA avers that, even when information is provided to a Commonwealth agency on a proprietary basis, there is no guarantee that it will be protected as such. Rasier-PA opines that neither Rasier-PA nor the Commission would ultimately be able to ensure the confidential treatment of this information. Rasier-PA submits that this type of information was provided under a temporary protective order in a similar application proceeding, and is now the subject of a petition seeking its release to the public. Rasier-PA Exc. at 7 (citing *Application of Lyft, Inc*. at Docket No.   
A-2014-2415045).

Rasier-PA points out that the *Interim Order* directed the Parties to present evidence on issues enumerated by the Commission in the *Uber Complaint Proceeding*. Rasier-PA submits that the Complaint proceeding is still pending before the Commission, and no determination has been made as to whether the licensing of a software product by Uber constitutes unlawful brokering under Section 2505 of the Code, 66 Pa. C.S. § 2505. Rasier-PA states that, despite the pendency of the Complaint and the lack of an adjudication, the ALJs issued the *Interim Order* noting their belief that this information is relevant to consideration of the pending Application and directing the Parties to present evidence on these issues. Rasier-PA Exc. at 8.

Rasier-PA explains that, at the appropriate time in the hearing on August 18, 2014, when Rasier-PA's witness was asked questions pertaining to the sought-after trip data, Rasier-PA's counsel objected on the basis that the information was highly confidential and proprietary and irrelevant to the application proceeding. Rasier-Exc. at 8 (citing Tr. at 251-252). Rasier-PA stated that, at the direction of the ALJs, Rasier-PA's counsel appeared the following morning and provided legal support for the objections. At that time, Rasier-PA objected to the disclosure of data on trips arranged through the App on three grounds: (1) it constitutes a trade secret, the market value of which would diminish if it is disclosed and which disclosure would be competitively harmful to its business; (2) the Fifth Amendment of the United States Constitution protects against disclosure of this information; and (3) trip data is irrelevant to the pending application proceeding, and any probative value of this evidence is outweighed by the unfair prejudice to Rasier-PA of producing it in this context. Rasier-PA submits that, in raising these objections, it stressed the broad scope of the Right-to-Know Lawand the inability of the Commission to protect proprietary data from public disclosure. Rasier-PA noted that it did not provide the data, as its witness was not authorized to disclose the information in that setting. Rasier-PA Exc. at 8-9 (citing Tr. at 320-323, 332).

Rasier-PA avers that it is well established in Pennsylvania that a trade secret consists of a compilation of information which is used in one's business, and which gives an advantage over competitors who do not know or use it. It also submits that the trip data that is the subject of the *Interim Order* is information that Rasier-PA has spent considerable time and effort to collect. Rasier-PA states that, as such, it is a valuable asset that belongs to Rasier-PA, the disclosure of which would diminish its market value. Rasier-PA explains that this would result because the data provided in response to the *Interim Order* would reveal the number of trips provided through the App in a very limited geographic area of Allegheny County over relatively short time periods. Rasier-PA avers that it would be possible for Rasier-PA's competitors to determine the size of the business and the lucrative nature of the business. Rasier-PA Exc. at 9.

Further, Rasier-PA argues that it is inappropriate to compare the trip data at issue to the daily log sheets that call and demand carriers are required to complete under the Commission's regulations at 52 Pa. Code § 29.3l3(c). Rasier-PA explains that daily log sheets do not equate to a compilation of trip data showing the number of rides that were provided by a start-up business in a narrow geographic region over relatively short time periods. Instead, Rasier-PA submits that it uses this information to make decisions about growth or expansion of the business. Rasier-PA warns that, if the information ends up in the hands of its competitors, it could be used as a basis for allocating their resources differently or changing their business models in a way that is injurious to Rasier-PA's business. Rasier-PA avers that due to the very nature of the proposed service being new and innovative, thereby qualifying for classification as experimental service, data about rides arranged through the App is commercially sensitive and its disclosure would be harmful to Rasier-PA. Rasier-PA Exc. at 10.

Rasier-PA submits that the Fifth and Fourteenth Amendments to the U.S. Constitution prohibit the government from depriving anyone of "property, without due process of law," or taking property "for public use, without just compensation." Rasier-PA Exc. at 10. It argues that it is protected by the Fifth Amendment of the United States Constitution from disclosing its proprietary information. Rasier-PA avers that, given the allegations in the pending complaint about unlawful brokering, which have not been proven and the Commission has not yet adjudicated, disclosure of information about rides that were arranged through the App could result in prosecution under Section 3310 of the Code, 66 Pa. C.S. § 3310, and therefore is protected by the Fifth Amendment. Rasier-PA also presents arguments that the agents of the corporation can claim the benefits afforded by the Fifth Amendment. Rasier-PA Exc. at 11.

Rasier-PA also argues that the trip data is irrelevant to this Application. Because the Commission has not yet adjudicated the *Uber Complaint Proceeding*, the Applicant contends the trip data is not evidence of any prior unauthorized operations that may be relied upon in this proceeding. According to Rasier-PA, any probative value of the evidence is heavily outweighed by the danger of unfair prejudice to the Applicant and is inadmissible in the Application proceeding. Moreover, Rasier-PA submits that during the hearing it admitted to an affiliate continuing to provide services after the issuance of the *Uber Order*. Therefore, it contends, the Protestants had evidence in the record upon which to argue lack of propensity to operate legally and safely and the number of trips that were provided by the Applicant’s affiliate was not needed for that argument. *Id.* at 11-12.

Additionally, the Applicant claims the Recommend Decision erroneously claimed that Rasier-PA did not provide any justification for failing to file a Motion for a Protective Order. Rather, Rasier-PA points to its arguments pertaining to the breadth of the Right-to-Know Law and its belief that any submission of its proprietary information to the Commission could be subject to public disclosure. *Id.* at 12-13.

Next, the Applicant takes issue with the ALJs’ finding that Rasier-PA failed to provide advance notice of its intention to object to trip data. Rasier-PA argues that no Commission Regulation or Order directed the Applicant to disclose, prior to the hearing, its intent to forgo production of this information. Moreover, the Applicant claims the Protestants were not prejudiced by a lack of advance notice and no Party has claimed that it determined to forgo calling a witness based on the assumption of the production of the trip data. The Applicant asserts that, because the number of trips was solely within the possession of Rasier-PA, the Protestants could not have prepared any differently even if they had known in advance that Rasier-PA did not intend to supply the information. *Id.* at 13-14.

In addition, the Applicant argues that the Motion to Dismiss was not made at this docket but at the Statewide Application docket. Rasier-PA notes that an attorney for some of the Protestants in the Statewide Application offered the Motion to Dismiss. Although the Protestants in this Application proceeding joined in a later Motion for Summary Judgment filed by the same attorney for the Statewide Application Protestants, they did not join in the Motion to Dismiss. *Id.* at 14.[[11]](#footnote-11)

Additionally, the Applicant claims the Recommended Decision unfairly criticizes Rasier-PA for not seeking interlocutory review of the *Interim Order*. *Id.* at 14-15. Moreover, the Applicant claims it was inappropriate for the ALJs to suggest that Rasier-PA’s failure abide by the *Interim Order* renders it highly unlikely that Rasier-PA intends to comply with the Commission’s regulatory authority. In support of its propensity to operate legally and safely, the Applicant highlights several examples including, the filing of its ETA application when advised by Commission staff, implementing robust driver integrity measures, requiring safety standards that meet or exceed Pennsylvania inspection standards, and compliance with the various measures mandated in the *July 2014 ETA Order*. *Id.* at 15-16.

Next, the Applicant argues that neither 52 Pa. Code § 5.245 nor the decisions cited by the ALJs, which involve wholly different scenarios than were presented here, support dismissal without a consideration of the merits. Rather, the Applicant claims that Rasier-PA fully participated in the hearing, offering testimony in support of the Application and introduced evidence in the record. Moreover, the Applicant contends there were no meaningful remedies available to Rasier-PA for challenging the *Interim Order*, because a protective order – even if granted – would not necessarily protect its claimed proprietary trade secrets from later disclosure. In addition, it claims that no public meeting was scheduled during the time between the issuance of the *Interim Order* and the scheduled hearing to permit interlocutory review. According to Rasier-PA, it offered valid legal grounds for its objections and no party was prejudiced by the lack of advance notice or by the failure of Rasier-PA to furnish its claimed proprietary trip data. Accordingly, the Applicant argues that the sanction of outright dismissal of the Application was unwarranted and should be rejected by the Commission. *Id.* at 16-17.

In its Replies to Exceptions, JB Taxi argues that the ALJs’ findings of intentional obstruction of the hearing process were supported by the record. Further, JB Taxi contends that the Commission should not allow the Applicant’s dissatisfaction with the Right-to-Know Law as a justification for obstructing a Commission proceeding. With respect to the Applicant’s argument of lack of prejudice to the Protestants, JB Taxi asserts that an adversary should not have to anticipate defiance of a Commission directive. Moreover, JB Taxi states it was entitled to expect evidence bearing on the Applicant’s fitness, as determined to be relevant in the Interim Order, and that such evidence would not have been withheld without justification and advance notice by the Applicant’s counsel. JB Taxi R. Exc. at 4-5.

### 3. Disposition

Under the circumstances in this case, we do not agree with the ALJs’ determination to dismiss the entire Application pursuant to Section 5.245(c) of our Regulations, 52 Pa. Code § 5.245(c). The ALJs found that Rasier-PA’s Application should be dismissed based on Rasier-PA’s failure to comply with the *Interim Order*, which the ALJs considered an obstruction of the orderly conduct of the proceeding. We note that, while Section 5.245(c) provides that a presiding officer “*may* take appropriate action,” including dismissal of an application, such dismissal is not mandated by our Regulations. The ALJs could have chosen to pursue a different form of sanction or penalty in this case.

Dismissal of the Application was not in the public interest at this late stage in this proceeding, after the Parties had the opportunity to conduct discovery; three days of evidentiary hearings had been held; the Parties had presented testimony and submitted exhibits, resulting in a transcript of 735 pages; and the Parties had filed Briefs. Contrary to the ALJs’ findings, this situation is not akin to a party’s refusal to respond to discovery requests in the early stages of a proceeding. Moreover, based on our evaluation of the record, Rasier-PA’s failure to comply with the *Interim Order* did not materially prejudice the Parties, as they were able to put on their cases during the evidentiary hearings and to file Briefs afterward in support of their positions. Based on the developed record in this case, the Commission is also able to consider and reach a disposition on all of the relevant issues pertaining to the Application and approve the Application, subject to terms and conditions, as explained in detail herein. To dismiss the Application, without consideration of the developed record and the time and resources the Parties have committed to this case, would be contrary to the public interest.

While we find that dismissal of the entire Application is not appropriate in this case, we conclude that other action may be appropriate based on Rasier-PA’s failure to comply with the *Interim Order*. We will not condone Rasier-PA’s blatant disregard for the ALJs’ directives in the *Interim Order* and its failure to provide a valid legal justification for refusing to comply when the ALJs provided Rasier-PA with the opportunity to explain its conduct. Furthermore, we find meritless the Applicant’s invocation of the self-incrimination privilege under the Fifth Amendment.

The privilege against self-incrimination is guaranteed by the Fifth Amendment of the United States Constitution and by [Article I, Section 9 of the Pennsylvania Constitution](http://web2.westlaw.com/find/default.wl?mt=79&db=1000427&docname=PACNART1S9&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=1992224014&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=C6C40DD8&rs=WLW14.07). U.S. Const. amend. V; Pa. Const. art. I, § 9. This privilege protects an individual from being called as a witness against himself or herself in both criminal and civil proceedings, formal or informal, where the answers to questions might incriminate the individual in future criminal proceedings. *McDonough v. Com., Dept. of Transp.*, 618 A.2d 1258, 1260-61 (Pa. Cmwlth. 1992); [*Caloric Corporation v. Unemployment Compensation Board of Review*, 452 A.2d 907 (Pa. Cmwlth. 1982)](http://web2.westlaw.com/find/default.wl?mt=79&db=0000162&tc=-1&rp=%2ffind%2fdefault.wl&findtype=Y&ordoc=1992224014&serialnum=1982151533&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=C6C40DD8&rs=WLW14.07).[[12]](#footnote-12) Therefore, the privilege against self-incrimination “ ‘can be asserted in any proceeding, civil or criminal, *administrative* or judicial, investigatory or *adjudicatory*,’ in which the witness reasonably believes that the information sought or discoverable as a result of his or her testimony could be used in a subsequent state or federal criminal proceeding.” *U.S. v. Balsys*, 524 U.S. 666, 672 (1998); *Frompovicz v. W.C.A.B. (Palsgrove)*, 642 A.2d 638 (Pa. Cmwlth. 1994).

A state legislature is, however, empowered to deprive a witness of the constitutional privilege against self-incrimination by affording him or her complete immunity from prosecution for the offense to which the testimony relates. *Commonwealth v. Johnson*, 507 Pa. 27, 487 A.2d 1320 (1985). Such statutes are designed to serve as substitutes for the Fifth Amendment right not to incriminate oneself. *Commonwealth v. Strickler*, 481 Pa. 579, 393 A.2d 313 (1978). The purpose of an immunity statute is to obtain truthful information, most frequently regarding otherwise undiscoverable offenses, and this is accomplished by relieving the witness of exposure to the essence of what the Fifth Amendment protects against—self-accusation, perjury, or contempt. 81 Am. Jur. 2d Witnesses § 140.

The Code specifically affords witnesses testifying before the Commission with immunity from prosecution for the matter concerning that which they are compelled to testify. 66 Pa. C.S. § 312. Section 312 of the Code provides, in relevant part, that:

No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation or inquiry by, or hearing before, the commission or its representative, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which he shall have been compelled, under objection, to testify or produce documentary evidence….

*Id.* Therefore, Section 312 of the Code affords witnesses testifying before the Commission with complete immunity from prosecution for the offense to which the witness’s testimony relates.[[13]](#footnote-13) As such, Rasier-PA may not refuse, on the basis of the privilege of self-incrimination, to testify or provide other information in a Commission proceeding. Therefore, Rasier-PA’s Fifth Amendment defense is rejected.

Thus, as part of the Compliance Plan filing, described in greater detail, infra, Rasier-PA shall submit the trip information required in the *Interim Order*. Rasier-PA may mark such information as confidential pursuant to Commission Regulations. If marked confidential, this information will be treated according to our existing confidentiality practices and Regulations. Additionally, we shall refer this matter to the Commission’s Bureau of Investigation and Enforcement (I&E) for such further action related to Rasier-PA’s non-compliance with the *Interim Order* as deemed appropriate.

Accordingly, we reverse the Recommended Decision dismissing the Application and will proceed to an evaluation of the proposed experimental service.

## Experimental Service

### 1. Application

Rasier-PA plans to use a digital platform to connect passengers to independent drivers or operators (Operators) with whom it will contract. Operators will use their personal, non-commercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the technology from its parent corporation, Uber, to generate leads from riders who need transportation services. Rasier-PA will not own vehicles, employ drivers or transport passengers. Application at 3.

Under this business model, riders will request transportation via Uber technology through the Internet or an App on their smartphones. When an Operator responds to the request, the rider will receive the vehicle type and a photo of the Operator, along with an indication of the Operator’s current location and estimated time of arrival. Operators will not be permitted to solicit or accept street-hails. The Applicant proposes to operate this service for passenger trips between points in Allegheny County. *Id.*

Rasier-PA states that it will maintain a website that provides a customer service telephone number or email address. It will also maintain records to demonstrate compliance with all of the requirements, standards and obligations described in the Application. Additionally, the Applicant acknowledges that it is subject to an annual assessment based upon reported gross Pennsylvania intrastate revenues, which it contends will be delegated to a third party to interface with the Commission. Rasier-PA further understands that it has sole responsibility to address Commission-related passenger complaints and that a failure to adhere to the commitments made in the Application may result in the Commission imposing sanctions, including civil penalties, suspension and revocation of the certificate of public convenience. Application at 7.

### 2. Positions of the Parties

The various Protestants[[14]](#footnote-14) argued that the Applicant is seeking authorization to operate a TNC, a term that is undefined under the Code. *See e.g.,* Concord and Executive Brief at 2. According to the Protestants, the General Assembly has not empowered the Commission to grant certificates of public convenience to transportation network companies. Although the Commission may grant certificates to certain classes of transportation, the Protestants contend that the Application must be denied because Rasier-PA is not a “motor carrier” – as defined in Section 102 of the Code, 66 Pa. C.S. § 102. The Protestants submit that the term “motor carrier” requires the Applicant to own or operate the motor vehicles involved in the proposed service. Here, the proposed service involves independent drivers owning and operating their own vehicles. Additionally, they argue that the “experimental service” regulation under 52 Pa. Code § 29.13 only applies to “motor carriers” as defined in the Code. *See e.g.,* Concord and Executive Brief at 7-11.

The Protestants also contend that the Applicant is attempting to act as a broker and not as a motor carrier. *Id.* at 12-14. Pursuant to 66 Pa. C.S. § 2505(a), brokers of transportation in the Commonwealth must obtain a brokerage license issued by the Commission and the broker must utilize certificated motor carriers to provide transportation. However, the Applicant does not hold a broker license nor does it intend to use certificated drivers to provide the transportation service. According to the Protestants, the Commission is prohibited from allowing the Applicant to provide such broker services. *See e.g.,* Concord and Executive Brief at 12-14.

The Applicant argues that because its new and innovative service does not fit squarely within the types of transportation services delineated in the Code and the Commission’s Regulations, it should qualify as an “experimental service.” Rasier-PA Brief at 47. According to the Applicant, until the Code and the Regulations catch up with technology, the Commission has appropriately acted to ensure that the existing regulatory framework does not prevent the delivery of innovative transportation options and has properly classified the proposed transportation network service as “experimental service.” *Id.*

**3. Disposition**

In the Statewide Application proceeding, the ALJs disagreed with the Protestants’ identical contentions that the Applicant as a TNC cannot be considered a motor carrier and that Rasier-PA is ineligible for a Certificate of Public Convenience. First, the ALJs explained that the Code does not require the Applicant to own vehicles in order to be a motor carrier. In support, the ALJs referenced the following definitions under Section 102 of the Code, 66 Pa. C.S. § 102: (1) a transportation public utility is: “Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . . transporting passengers or property as a common carrier;” (2) a “common carrier” is a person or corporation “holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers . . . .;” and (3) a “common carrier by motor vehicle” is a common carrier which undertakes the transportation of passengers within the Commonwealth “by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes the motor vehicle, with or without driver, for transportation for use in the transportation of persons . . . .” Statewide Application R.D. at 27-28.

Further, the ALJs did not consider the Applicant’s own statements that it is not providing transportation service to be persuasive. Rather, viewing the proposed service as a whole, the ALJs deemed the Applicant as seeking to offer transportation to passengers for compensation and determined that the Commission has the jurisdiction to grant a certificate of public convenience to a TNC. *Id.*

Next, the ALJs recognized that the Commission regulates various types of motor carrier service and that not all forms of common carrier transportation fit squarely within these categories. As such, the Commission promulgated a regulation for “experimental service” to accommodate a proposed transportation service not encompassed in the regulatory categories. The ALJs concluded that it is appropriate to consider the Applicant’s transportation service under the experimental service regulation as a motor carrier because it does not fit within any of the other regulatory categories including as a broker of transportation service. *Id.* at 30.

The ALJs explained the following in support of their finding:

[Section 29.352] of the regulations permits the Commission to approve a type of motor carrier service not currently contemplated by the regulations on a short-term basis, which permits the Commission (or the General Assembly) the time to promulgate additional regulations [or laws] to accommodate the proposed service if it is appropriate to do so. It also provides the certificate holder with the time to concretely demonstrate that the service proposed is indeed a public benefit, that the service can be operated safely and that the certificate holder will maintain an appropriate relationship with the Commission as the regulatory body. Section 29.352 further provides the Commission with the flexibility to waive the application of certain regulations that are not appropriate to impose and to also impose additional requirements which are not explicitly provided for in the Code, particularly informational and reporting requirements.

Statewide Application R.D. at 31 (citing *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*, Docket No. A-2014-2410269 (Order entered May 22, 2014) (*Yellow X*)).

Upon review, we agree with the analysis of the ALJs in the Statewide Recommended Decision that the Commission has jurisdiction to grant a certificate of public convenience to a TNC offering transportation services to passengers for compensation. In contrast to the interpretations offered by the Protestants, the Code clearly does not require the Applicant to own vehicles in order to be a motor carrier. Rather, the definitions of transportation “public utility,” “common carrier,” and “common carrier by motor vehicle” convey the opposite position that the provision of transportation service can be offered indirectly and independent of actual ownership of a vehicle. 66 Pa. C.S. § 102. There is no legitimate question that Rasier-PA, utilizing the Uber software and back office functions, is offering and operating “on demand” motor carrier passenger service to the public.

As we discussed in the *July 2014 ETA Order*, ourRegulations delineate various types of motor common carrier passenger service, which include 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. Each of these types of passenger service has unique characteristics that define the particular transportation mode. However, not all types of common carrier transportation fit squarely within these specified categories, as we recognized when we promulgated these regulations. Therefore, in order to accommodate a proposed transportation methodology not encompassed within the stated categories, our regulations also provide for “experimental service” under 52 Pa. Code § 29.352.

In the Statewide Application proceeding, the ALJs correctly concluded that it is appropriate to consider the proposed transportation under the experimental service regulation rather than as a broker of transportation under 66 Pa. C.S. § 2505(a), which precludes a broker from using uncertificated motor carriers.[[15]](#footnote-15) Clearly, the Applicant is proposing to use private individuals in their personal vehicles rather than certificated motor carriers. We agree with the ALJs that the innovative nature of this proposed service – the use of so-called non-professional drivers in their private vehicles – requires an evaluation under Section 29.352 of our Regulations and a determination of whether this service can be provided in a safe manner. As the ALJs aptly explained, this regulation gives the Commission the flexibility to consider a new type of motor carrier service on a trial basis to determine if the proposed service is beneficial to the public.

Therefore, we conclude that the Application is properly before us as a request for experimental service and shall proceed to an analysis of whether it meets the evidentiary criteria under 52 Pa. Code § 41.14.

## Evidentiary Criteria for Motor Carrier Applications

**Statement of Policy - 52 Pa. Code § 41.14**

### Public Demand or Need (52 Pa. Code § 41.14(a))

#### Application

The Applicant contends that its experimental service will fill significant gaps in the existing transportation infrastructure. According to Rasier-PA, its proposed service will provide reliable, affordable and safe alternatives to existing modes of transportation throughout the Commonwealth and needed transportation options in traditionally underserved neighborhoods. Rasier-PA Brief at 17.

In support of its Application, Rasier-PA presented the testimony of Sally J. Guzik, an Allegheny County resident who testified that the proposed service enabled her to travel to and from a hospital to visit a family member who was dying of cancer. Ms. Guzik testified that she frequently walks or uses public transportation and that her attempts to use other forms of transportation resulted in unsuccessful calls or failure to be picked up. However, she testified that when using “the new ride sharing application, I have never had to wait more than 15 minutes.” Tr. at 36.

As to evidence of compelling societal benefits responsive to public demand, the Applicant presented the testimony of Brian Bashin, Chief Executive Officer for Lighthouse for the Blind. Mr. Bashin testified about the impact of the proposed service for blind and visually impaired individuals as follows:

This is not a discretionary item or just might be [a] nice item. This is something that some 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.

Tr. at 165.

The Applicant also presented the testimony of Mr. Gore, an Uber employee and former Associate General Manager-Uber Pittsburgh. Mr. Gore testified about research and demand for App services before launching the service in a new market and when a new service has been launched it has “consistently been one of overwhelming and instant demand and use.” Tr. at 66.

The Applicant submits, through Mr. Gore’s testimony, that the entry of its experimental service into a new market reduces wait times for a ride especially in underserved neighborhoods, referencing a study conducted in Boston and Mr. Gore’s own experience in Washington D.C. Tr. at 70. Mr. Gore also testified that the rates of driving under the influence decline in markets where the service becomes available. Tr. at 75.

#### Positions of the Parties

The Protestants argue that the Applicant did not present any evidence of service requests pursuant to 52 Pa. Code § 3.382 and relied solely on the testimony of public witnesses. According to the Protestants, the evidence of need is thin to non-existent and limited to users in Allegheny County only, which service was provided illegally. Further, the Protestants contend that “the absence of sufficient public need testimony is puzzling given the grandiose claims from the Applicant’s vast public relations campaign regarding the need for its service.” Concord and Executive Brief at 25.

In its Brief, Rasier-PA cited to the *July 2014 ETA Order* and our conclusion that there is an immediate need for the proposed experimental service due to the inadequacy of existing transportation services in Allegheny County. Additionally, the Applicant cited to the verified statements of Allegheny County residents who supported the granting of its ETA. Rasier-PA Brief at 17-20.

#### Disposition

Upon review of the record, we conclude that the Applicant has met its burden of showing that the proposed service would fulfill some useful public purpose and be responsive to public need and demand.

In *Blue Bird*, *supra*,the Commission clarified the type of evidence an applicant may present to satisfy its burden of proof under Section 41.14(a), stating, in pertinent part, that:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant’s proposed service will satisfy the supporting witnesses’ asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that “approval of the application will serve a useful public purpose, responsive to a public demand or need.”

*Id.* at 272.

An applicant is not required to establish a public demand or need for the proposed transportation in each and every point within the proposed service territory. Rather, it is sufficient if an Applicant establishes a cross section of public demand or need for the proposed service in the proposed service territory. *Morgan Drive Away. Inc. v. Pa. PUC*, 512 A.2d 1359 (Pa. Cmwlth. 1986); and *Purolator Courier Corp. v. Pa. PUC*, 414 A.2d 450 (Pa. Cmwlth. Ct. 1980).

The number of witnesses which comprise a cross section of the public on the issue of public demand or need for an Applicant’s proposed service will necessarily vary with the circumstances of the case such as the scope of the requested operating authority and the population density in the intended operating territory. *Blue Bird* at 274. Where the applicant seeks a narrow grant of operating authority, fewer witnesses are required to show a cross section of the public needing the applicant’s proposed transportation in the intended operating territory. *Id*. at 275.[[16]](#footnote-16) Moreover, in the context of an application for experimental service, the Commission may exercise additional discretion in regard to market entry for a proposed service that is new and innovative.

Here, the Applicant has provided a sufficient cross section of witness testimony relevant to public need and demand in Allegheny County. The Applicant’s evidence supports its contention that a substantial benefit will be derived from the initiation of its competitive service. We agree that the introduction of the proposed transportation service will provide consumers with another competitive alternative to traditional call and demand service by providing faster and user-friendly scheduling of transportation service. The availability of this new and innovative service, together with appropriate consumer protections, will provide a benefit to the public in the proposed service territory. Because of the unique nature of the proposed experimental service, we do not believe that the Applicant is required to present a large evidentiary showing of need in this case. The fact that the experimental certificate is valid for only two years will give the Applicant an opportunity to establish market demand for the new service. In addition, we agree that the Applicant has set forth sufficient evidence to establish that its proposed service will provide a compelling societal benefit to consumers throughout the proposed service territory who are blind or visually impaired. Accordingly, we find that Rasier-PA has satisfied the evidentiary criteria for public demand or need.

### Evidence of Fitness – Driver Integrity

**(52 Pa. Code § 41.14(b)(4) & (b)(6))**

#### Application

Rasier-PA states that it will require Operators to meet standards that are consistent with, and more stringent than, the Commission’s requirements set forth in 52 Pa. Code §§ 29.502-29.507, as described more fully below:

*Criminal Background Checks.*  Applicant will conduct a local and national criminal background check that includes the Multi-State/Juris Criminal Records Locator and the National Sex Offender Registry database on each Operator before the Operator may access the digital platform to receive requests for transportation. A match on the national sex offender registry or a conviction that appears on a criminal background check within the past 7 years for crimes of violence, sexual abuse, felony, robbery, or felony fraud, shall automatically and permanently disqualify an individual from acting as an Operator.

*Driving History Record.* Applicant will have a driving history record conducted on each Operator before the Operator may offer service. 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 the police, or the use of a motor vehicle to commit a crime, or a conviction that appears on a driving history check in the previous 3 years for driving with a suspended or revoked license, shall automatically disqualify an individual from acting as an Operator.

*Drugs or Alcohol.* Applicant has a zero tolerance policy on the use of drugs or alcohol while an Operator is providing ride-sharing services. Notice of this zero tolerance policy is on the Applicant’s website, along with procedures to report a complaint, including a telephone number for the Commission about an Operator with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Applicant immediately suspends an Operator upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, and such suspension will last the duration of the Applicant’s investigation.

*Other Driver Requirements.* Operators must possess a current, valid driver’s license, proof of registration, proof of motor vehicle insurance and be at least 21 years of age.

Application at 5-6.

#### b. Positions of the Parties

Rasier-PA explains that it requires its operators to meet standards more stringent than the standards set forth in 52 Pa. Code §§ 29.502-29.507. In addition to basic requirements that Operators must be at least twenty-one years of age, and produce proof of a valid driver’s license, a registration and vehicle insurance, Rasier-PA submits that it conducts extensive criminal background checks and reviews of driving history records, automatically disqualifying individuals who do not meet Rasier-PA’s driver integrity requirements. Rasier-PA Brief at 37-38.

Rasier-PA submits that when it receives a complaint from a customer it investigates the issue and timely responds to the customer. It argues that when Operators fail to fulfill the requirements of their agreements with Rasier-PA, they are deactivated from the system. Rasier-PA Brief at 39.

Rasier-PA also references the Commission’s conditional approval in *Yellow X* requiring the filing of a driver training program description as part of a compliance filing for the authority to operate and anticipates a similar requirement by the Commission for the approval of its Application.

The Protestants argue that the Applicant will lack direct control and supervision of its Operators. They note that, although the Applicant proposes to conduct initial criminal background checks, it did not provide testimony that it will provide follow-up checks. *See e.g.*, Concord and Executive Brief at 29.

#### c. Disposition

Upon review, we acknowledge that Rasier-PA’s proposed criminal background check requirements appear to exceed the Commission’s regulatory requirements. The Applicant’s seven-year look-back period on the Multi-State/Juris Criminal Records Locator is more stringent than the twelve-month criminal look back period under 52 Pa. Code § 29.505(a). Further, Rasier-PA submits that it will automatically and permanently disqualify an individual if there is a match on the National Sex Offender Registry database or if the criminal background check reveals a crime of violence, sexual abuse, felony, robbery, or felony fraud within the past seven years. In contrast, 52 Pa. Code § 29.505(c) contains no automatic disqualification for violent crimes or sexual offenses. Rather, Section 29.505(c) only prohibits the employment of a driver if the prior conviction adversely affects the individual’s suitability to provide service.

Additionally, the proposed driver history look-back period exceeds the requirements of 52 Pa. Code § 29.504. Rasier-PA plans to automatically disqualify an individual Operator whose driving history check reveals, within the past seven years, a conviction of aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade the police, or the use of a motor vehicle to commit a crime. The look-back window under Section 29.504, for a driver history report, is three years and there is no automatic disqualification if the check reveals a poor driving history.

On the face of the proposal, however, there is no requirement that the Applicant conduct follow-up criminal and driver history record checks. During the hearing, Mr. Gore testified that he believes there is a process in place for annual criminal and driver record checks but could not verify such a policy. Tr. at 307. Additionally, although 52 Pa. Code §§ 29.504(b) and 29.505(b) require carriers to conduct annual driver history checks every twelve months and criminal background checks every two years, it is unclear how Rasier-PA intends to comply with the regulatory requirement for follow-up background checks and which employee would be responsible for regulatory compliance.

In order to ensure ongoing compliance with the proposed record checks, we will require Rasier-PA to conduct criminal and driver history record checks both at the time of driver sign-up and annually thereafter. Specifically, we shall require Rasier-PA to undertake driver background checks of the scope and breadth described in its proposal and consistent with 52 Pa. Code §§ 29.503 and 29.505 both at the time of driver sign-up and annually thereafter. Rasier-PA shall maintain verifiable records of this information for two years.

Additionally, Rasier-PA shall undertake drivers’ history checks as outlined in its proposal and consistent with 52 Pa. Code § 29.504 both at the time of driver sign-up and annually thereafter. Rasier-PA shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Rasier-PA shall maintain verifiable records of this information for three years.

Accordingly, given the experimental nature of the service, we find that the Applicant has provided sufficient evidence to satisfy the driver integrity factor. However, we shall order the Applicant to ensure annual criminal and driver record checks consistent with this Opinion and Order.

### Evidence of Fitness – Vehicle Safety

#### (52 Pa. Code § 41.14(b)(2))

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#### Original and Amended Application

In its original Application, Rasier-PA stated that it will require Operators’ vehicles to meet standards that are consistent with the Commission’s requirements, particularly as to safety, as more fully described below:

*Inspections.*  Applicant will require vehicles operated by Operators to undergo and pass an annual and comprehensive safety inspection before the vehicle provides a ride-sharing service, which is consistent with the [Commission’s] requirements at 52 Pa. Code §§ 29.402 and 29.405. Such inspections 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. Additionally, Applicant acknowledges that vehicles are subject to inspection by Commission enforcement officers through routine inspections to ensure compliance with these requirements.

*Vehicle Age and Type.* Operators contracted by Applicant will be required to use motor vehicles that are not more than 10 years old and are designed to transport no more than 10 persons, including the driver. Eligible vehicles include street-legal coupes, sedans, or light duty vehicles including vans, minivans, sport utility vehicles, hatchbacks, convertibles and pickup trucks.

*Other Vehicle Requirements.* Vehicles are required to be in a condition that meets or exceeds the standards set forth in 52 Pa. Code § 29.403 including seats in working order; vehicles in clean and sanitary condition; factory type heaters in working order; clean trunk compartments suitable for carrying luggage; exteriors free of large dents or gouges; 4 matching wheel covers; and operative air conditioning.

Application at 6-7.

Rasier-PA subsequently amended its Application to reduce the vehicle age limit to eight years to be consistent with the *July 2014 ETA Order*. Tr. at 63. However, Mr. Gore testified that, although Rasier-PA is currently complying with the 100,000 miles odometer limit set forth in the *July 2014 ETA Order*, he did not believe the mileage limitations would improve the quality of the vehicles. According to Mr. Gore, Rasier-PA’s riders are sensitive to quality and hold the Applicant to a higher standard than the odometer limitation can likely achieve. Tr. at 64. Thus, Rasier-PA proposes eliminating the odometer limitation altogether or selecting a higher odometer reading level in connection with this Application. Rasier-PA Brief at 41.

1. **Positions of the Parties**

Rasier-PA explains that it requires all vehicles to pass a comprehensive annual safety inspection as required by the Commission’s Regulations at 52 Pa. Code   
§ 29.402 (vehicle equipment requirements) and 52 Pa. Code § 29.405 (state inspection), which will be performed by Pennsylvania official inspection stations. Rasier-PA Brief at 39-40. Rasier-PA also points out that its vehicles will be marked pursuant to the Commission’s *July 2014 ETA Order* and will be subject to routine inspections by Commission enforcement officers. *Id.* at 41.

The Protestants argue that the Applicant is simply relying on the annual PennDOT inspections and does not propose to conduct any vehicle inspections itself. *See e.g.*, Concord and Executive Brief at 28. They also contend that the Applicant does not propose to own or lease any of the vehicles. As such, the Applicant is unable to certify that the Operators’ vehicles are safe to operate on the highway. *Id.*

1. **Disposition**

Rasier-PA has set forth a base-level framework for vehicle safety that includes annual PennDOT inspections and customer feedback. However, because the plan does not include independent inspections by Rasier-PA or Uber, we believe that additional standards consistent with the *July 2014 ETA Order* are required to bolster public safety.

Accordingly, we shall require conditions for operation in addition to those set forth in the Application, as amended. First, the Applicant shall ensure that the vehicles used in its operation successfully pass PennDOT inspections pursuant to 52 Pa. Code § 29.405 on an annual basis. Rasier-PA shall maintain verifiable records of this information for three years.

Second, Rasier-PA shall ensure that the vehicles used in its operation remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402(1) and (2) and 29.403. Consistent with our Regulations, these vehicles shall be subject to periodic inspection as set forth at 52 Pa. Code §§ 29.406 and 29.407. Rasier-PA shall maintain verifiable records of this information for three years.

Third, Rasier-PA shall not permit the use of vehicles older than eight model years, consistent with 52 Pa. Code § 29.314(d).[[17]](#footnote-17) Rasier-PA shall maintain verifiable records of this information for three years.

Furthermore, in order to facilitate random and routine inspections, we will require that vehicles used in the Applicant’s proposed service be properly marked in compliance with Sections 29.71 and 29.72 of our Regulations, 52 Pa. Code   
§§ 29.71-29.72, while operating in Stages 1, 2 or 3 of the proposed service.[[18]](#footnote-18) As noted in the *July 2014 ETA Order*, these markings are critical for our enforcement staff to visually identify the vehicles used in the public service. The use of placards, or other distinguishable markings, on the outside of the vehicle is acceptable.

We also note that our current Regulations require that “vehicles be owned or leased by the certificate holder.” 52 Pa. Code § 29.101(a)(5). However, under the experimental service proposed by Rasier-PA, it will neither own nor lease the vehicles used in the service. Although, historically, the Commission has disallowed this structure to prevent abuses and to ensure accountability, we believe that in this instance, there is sufficient reason to waive this regulatory requirement. Notwithstanding Rasier-PA’s lack of ownership or lease interest, Rasier-PA is required to ensure that the vehicles operated in this service are in compliance with the Commission’s vehicle safety and insurance requirements, as explained above. We believe that by waiving the vehicle ownership/lease requirement, the Commission is able to make room for this new and innovative service, while still ensuring the safety of the passengers using this service. [[19]](#footnote-19)

### Evidence of Fitness – Employees (52 Pa. Code § 41.14(b)(2))

1. **Application**

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission will evaluate “[w]hether an applicant and its employees have sufficient technical expertise and experience to serve the territory requested.” 52 Pa. Code § 41.14(b)(2).

#### Positions of the Parties

The Protestants submit that there was no testimony presented regarding the experience or qualifications of any of the Applicant’s employees concerning their technical fitness. The Protestants averred that the testimony in this proceeding indicated that the Applicant does not have any employees and shares space in Pittsburgh with its parent company, whose employees only use the office on a part-time basis. Accordingly, the Protestants argued that the Applicant has failed to meet its burden of proof with regard to technical fitness. *See, e.g.,* Concord and Executive Brief at 26-27.

During the hearing, Mr. Gore testified that the Applicant will contract with Uber to have employees to execute on regulatory responsibilities. Tr. at 264. According to Mr. Gore, these functions include operating office hours, assisting operators, handling complaints, auditing documents and suspending drivers. Tr. at 197, 250, 263 and 309. Further, Mr. Gore testified that the general manager of Uber Pittsburgh is responsible for regulatory compliance in connection with the ETA. Tr. at 204-205, 263. He added that the general manager will be assisted by other members of the Uber Pittsburgh operations team, including the driver operations managers, operations and logistics coordinators and marketing or community managers. Tr. at 263.

#### Disposition

Upon review, we find that the relationship between Rasier-PA and Uber for the provision of services in Pennsylvania is relevant to the approval of the Application. Rasier-PA is a wholly owned subsidiary of Uber and the sole member of both Rasier-PA and Uber is Travis Kalanick. R.D. at 42; Tr. at 53. Thus, Uber has an “affiliated interest” with the Applicant pursuant to Section 2101 of the Code, 66 Pa. C.S. § 2101.[[20]](#footnote-20)

The Applicant proposes to use Uber employees to facilitate operational functions such as regulatory compliance, assisting Operators, handling complaints, auditing documents, and suspending drivers. Mr. Gore testified generally that the current general manager in Pittsburgh, Jennifer Krusius, and an operations team will be handling some of these responsibilities. We find the argument that Uber and its employees have successfully started and operated similar ventures in Washington D.C. and cities throughout the United States to be persuasive.  However, we believe it is unclear what the roles and responsibilities of Uber’s personnel will be, in terms of the provision of services to the Applicant – especially in relation to the provision of the handling of customer related complaints.

In pertinent part, Section 2102 of the Code, 66 Pa. C.S. § 2102, states:

(a) No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

The services that Uber will provide to the Applicant certainly appear to be management, supervisory, and other types of services that fall within the broad language of Section 2102. Pursuant to this Order, we will require the Applicant to submit for our review an affiliated interest agreement between it and any affiliates, including Uber. Further, as part of the Compliance Plan required in this Order, Rasier-PA shall include information related to the identities and job descriptions of the Uber employees and/or third party contractors, including the office locations of these persons, who are expected to provide services to Rasier-PA during the two-year certification period for the experimental service*.*

### Insurance (52 Pa. Code § 41.14(b)(3))

1. **Original and Amended Application**

In its original Application, Rasier-PA stated that it will require Operators to provide proof of valid and current liability insurance on all vehicles used in offering its services in at least the amounts specified in 75 Pa. C.S. §§ 1702and 1711, which sets forth insurance requirements for drivers in Pennsylvania. Rasier-PA states that it will submit to the Commission proof of adequate insurance evidencing policies and coverage that comply with and exceed the minimum standards required by the Commission at 52 Pa. Code §§ 32.11 and 41.21 (which sets forth the insurance requirements for passenger carriers in Pennsylvania and provides that a certificate to operate will not be issued until an insurer provides a certificate of insurance to the Commission, *i.e.*, a Form E). Application at 4-5.

Rasier-PA summarizes its proposed compliance with the insurance requirements in 52 Pa. Code §§ 32.11 and 41.21 as follows:

*$1 million of liability coverage per incident.*This policy covers the Operator’s liability from the time an Operator accepts a trip request through the App until the completion of a trip. This policy is in excess to the Operator’s own policy, but it acts as primary insurance if the Operator’s policy is not available for any reason, covering from the first dollar.

*$1 million of uninsured/underinsured motorist coverage per incident.* In the event that another motorist causes an accident with an Operator’s vehicle and does not carry adequate insurance, this policy of $1 million per incident covers bodily injury. This is important to ensure that passengers are protected in a hit and run situation.

*$50,000 of contingent comprehensive and collision insurance*. If an Operator holds personal comprehensive and collision insurance that is found not to apply, this policy covers physical damage to that vehicle that occurs during a trip, for any reason, up to $50,000 and with a $1,000 deductible.

*$50,000/$100,000/$25,000 of contingent coverage between trips.*During the time that an Operator is available but between trips, most personal liability insurance will provide coverage. However, the Operator is also backed by an additional policy that covers liability for bodily injury up to $50,000/individual/accident with a total of $100,000/accident and up to $25,000 for property damage. This policy is contingent to a[n] Operator’s personal insurance policy, meaning it will only pay if the personal auto insurance completely declines or pays zero.

Application at 5-6.

During the hearing, Rasier-PA presented the testimony of Henry Gustav Fuldner, Uber’s director of insurance and risk management, and amended the insurance provisions of the Application. Tr. at 514-516, 554-555, and 563.

Mr. Fuldner testified that Rasier-PA’s commercial automobile insurance carrier is James River Insurance Company (James River). James River is a property and casualty carrier principally domiciled in Ohio and is on the list of eligible surplus lines carriers maintained by the Pennsylvania Department of Insurance. According to Mr. Fuldner, James River is rated as A-minus by A.M. Best, a provider of credit ratings of insurance companies, with a financial size category indicating a policy holder surplus of $250 million to $500 million. Mr. Fuldner asserted that the outlook of future ratings for James River is positive. Further, Mr. Fuldner testified that James River filed the Form E with the Commission in compliance with the *July 2014 ETA Order*. Tr. at 513-514.

Mr. Fuldner testified that during Stages 1, 2, and 3, 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 on to the system until transportation services have been completed. Tr. at 514-516, 662-663. An exception to this proposal, to provide primary coverage during all three stages, would be if an Operator secures a policy that is specifically designed for for-hire transportation. According to Mr. Fuldner, in that situation Rasier-PA’s coverage would be excess to the Operator’s primary policy. Tr. at 662-663.

Under the Applicant’s proposal, the insurance could be provided by any combination of insurance maintained by the Operator and Rasier-PA, so long as the Operator’s policy specifically recognizes his or her use of the vehicle in connection with the use of the vehicle for hire. Tr. at 516.

Mr. Fuldner stated that, for all three stages, the Applicant proposes to provide $25,000 of first party medical benefits and $10,000 of first party wage loss benefits, as required by Pennsylvania law. Tr. at 515. In addition, Rasier-PA proposes to comply with 75 Pa. C.S. §§ 1701 to 1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirements for first party coverage of the driver of certificated vehicles under 75 Pa. C.S. § 1711.[[21]](#footnote-21) Tr. at 662.

For Stage 1, the Applicant proposes coverage consistent with 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. For Stages 2 and 3, the Applicant proposes to provide $1 million of third party liability insurance at a combined single limit, including property damage and bodily injury. Additionally, Mr. Fuldner stated that Rasier-PA proposes to maintain $1 million in uninsured/underinsured coverage for bodily injury per incident. Tr. at 515.

Rasier-PA’s proposal for Stages 2 and 3 mirrors the requirements under the *July 2014 ETA Order*. In support, Rasier-PA submitted into the record the $1 million insurance policy of its ETA. Tr. at 578-579, Exhs. 5 and 7. However, because the proposal for insurance coverage for Stage 1 is lower than both the coverage limits originally proposed in the Application and required under the *July 2014 ETA Order*, the policy has not been written and is unavailable. Mr. Fuldner testified that if the Commission approves the Application, Rasier-PA will secure the policy and, if requested, its insurance carrier will file a new Form E. Tr. at 645.

Mr. Fuldner also testified that the Applicant requires Operators to provide proof of insurance before operating on the platform and the Operator’s proof of insurance is checked annually. However, Mr. Fuldner stated that, if the Operator’s insurance or driver’s license would later lapse, it would have no impact on the insurance coverage provided by the Applicant. Tr. at 519, 545, 548 and 579.

The Applicant does not propose to require its Operators to notify their personal insurers that they are operating on the transportation network platform and to maintain records of such notifications. Rasier-PA Brief at 33-55. According to Mr. Fuldner, this requirement would be inappropriate and unduly burdensome. Tr. at 516-517.

1. **Positions of the Parties**

The Insurance Federation argues that, in light of the amendments made to the Application during the hearing, the Commission should adopt a “trust but verify” stance in examining the proposed insurance. The Insurance Federation contends that the Commission should reject the Applicant’s invitation to evaluate insurance compliance following approval of the Application. Rather, protection of the public requires examination of insurance coverage prior to approval. Insurance Federation Brief at 15, 19, 26.

Further, the Insurance Federation argues that the information provided by the Applicant at the hearing suggested serious gaps in coverage and asserts that the Applicant’s agreements with its Operators may supersede whatever insurance Rasier-PA may provide. Additionally, the Insurance Federation questions the relationship between James River, a surplus lines carrier not covered by the Guaranty Fund, and the Applicant. *Id.* at 18-20, 23, 27.

Next, the Insurance Federation argues that the Applicant provides no meaningful notice to its Operators about potential insurance issues. It contends that the minimal and misleading notice outlined during the hearing was never set forth in writing and can easily be lost in the fine print of other forms. With regard to the discussion of requiring Operators to notify their insurers of their participation in transportation services, the Insurance Federation explains that such a notification was required in the *July 2014 ETA Order*. The Insurance Federation contends that this notification serves an enormous purpose for drivers who may face cancellation or risk personal financial exposure in the event of an accident. Insurance Federation Brief at 18-24.

Rasier-PA argues that it is committed to maintaining liability insurance coverage in amounts that meet or exceed the Commission’s requirements. The Applicant reiterated the provisions of the Application, as amended, and explained that the coverage fully complies with the Commission’s insurance requirements under 52 Pa. Code § 32.11(b).[[22]](#footnote-22) Further, it argues that for Stages 2 and 3, the $1 million of third party liability and uninsured/underinsured coverage is “best in class” and mirrors the provisions of the *July 2014 ETA Order*. Rasier-PA Brief at 28-31.

Next, the Applicant argues that it advises Operators about various insurance-related items including: (1) notifying Operators that their personal insurance policy may not afford coverage in connection with their use of the platform; (2) requiring Operators to acknowledge the notification that their personal automobile policy may not provide coverage; (3) recommending that, if Operators have questions about coverage, they should contact their personal auto insurance carriers; (4) informing Operators of the insurance provided by Rasier-PA; and (5) advising Operators how to download evidence of insurance and instructing them to furnish such certificates or other evidence of Rasier-PA’s insurance in the event of an accident. *Id.* at 34-35 (citing Tr. 535-539, 545, 549-550, 586, 637, 663).

Next, Rasier-PA criticizes what it considers to be the Insurance Federation’s proposal to require Operators to notify their personal insurers of their participation in the transportation network platform and to maintain records of such notifications. In addition to claiming that the notification requirement for Operators is inappropriate and burdensome, Rasier-PA asserts it has no purpose because coverage for all three stages will be primary – unless the Operator’s personal policy recognizes his or her use in for-hire transportation services – and the Applicant does not propose to rely on the Operator’s personal policy. Furthermore, the Applicant argues that the notification requirement is not customary in other uses of personal vehicles in the course of business (e.g., for home health care services, real estate services, pizza delivery, newspaper delivery, etc.). *Id.* at 35-36.

### Disposition

Upon review of the record, and given the experimental nature of the service, we agree with Rasier-PA that it has provided sufficient evidence to show a commitment to maintaining insurance coverage in amounts that meet or exceed our regulatory requirements. However, the proposal related to notification and education of its drivers with respect to personal auto coverage is inadequate. Additionally, the absence of a requirement that drivers notify their personal auto insurers of their intent to operate in the Applicant’s service creates potential uncertainties or gaps in coverage. Accordingly, we shall impose additional requirements as a condition of approval of the Application consistent with this Opinion and Order.

As to Stage 1, Rasier-PA’s proposal matches the insurance requirements under 52 Pa. Code §§ 32.11(b) and 41.21 ($35,000 in liability insurance, split in the amounts of $15,000 bodily injury per person, $30,000 bodily injury per accident and $5,000 property damage per accident). For Stages 2 and 3, the proposal exceeds our current regulatory requirements ($1 million of third party liability insurance at a combined single limit, including property damage and bodily injury, and $1 million in uninsured/underinsured coverage for bodily injury per incident). In addition, for all three Stages, the Applicant proposes to provide $25,000 of first party medical benefits and $10,000 of first party wage loss benefits and to comply with 75 Pa. C.S. §§ 1701 to 1799.7 (relating to Motor Vehicle Financial Responsibility Law), including meeting the requirements for first party coverage of the driver of certificated vehicles under 75 Pa. C.S. § 1711.

Accordingly, the Commission will accept the Applicant’s proposed insurance levels during these periods as being in compliance with our Regulations. However, consistent with the provisions set forth in our *July 2014 ETA Order*, we will impose several additional requirements.

First, Rasier-PA’s insurance during Stages 1 through 3 must be the primary insurance coverage, *regardless* of any insurance coverage held by its Operators. During the hearing, Rasier-PA amended its Application to agree that its coverage shall be primary during Stage 1 and not contingent upon the Operator’s personal liability insurance, except when an Operator secures a policy that is specifically designed for transportation network services or other for-hire transportation. In those situations, Rasier-PA proposes that its coverage would be excess to the Operator’s primary policy. However, because the Commission views Stage 1 as a period when the driver is “on the clock” and working for the Applicant, it is Rasier-PA’s insurance (and not the driver’s insurance) that must be primary during Stage 1 regardless of any Operator insurance coverage, just as it is during Stages 2 and 3.

Second, with respect to Stage 0, the Commission accepts Rasier-PA’s proposal to require its Operators to provide proof of valid and current liability insurance, consistent with 75 Pa. C.S. §§ 1702 and 1711, during this period. However, in order to avoid any confusion regarding the status of a driver’s personal insurance coverage, we will require Rasier-PA to direct all operators/drivers to notify their insurer of their intent to operate in Rasier-PA’s service. Rasier-PA shall direct drivers, conspicuously in written or electronic form, to contact their personal automobile insurer regarding any policy impacts that may be caused by operating the vehicle for TNC use. As part of this notification, drivers shall verify that they agree to make such contact with their personal insurer within a specified period of time. Such verification may be in written or electronic form, and must include the driver’s signature (either electronic or written). Rasier-PA shall maintain verifiable records of this information for three years.

Third, Rasier-PA shall clearly and adequately inform drivers, in writing, of the levels of insurance coverage provided during Stages 1, 2 and 3, including whether it is providing comprehensive and collision coverage during service, and instruct drivers regarding the appropriate protocol to be followed in case of an accident. Rasier-PA shall maintain verifiable records of this information for three years in writing or electronic format.

In adopting these conditions, we reject the Applicant’s arguments pertaining to the requirement for drivers to notify their personal insurers of their participation in the Applicant’s service and to maintain records of such notifications. We are concerned that drivers may not understand that this commercial use of their personal vehicles could void their existing personal vehicle insurance, which would otherwise apply when their vehicle is not being used for TNC purposes.  To protect these drivers from unintentionally operating without insurance, we will require Rasier-PA to have drivers agree, in writing, during sign up to report the commercial operation of personal vehicles to their insurance companies within a specified period of time.

We agree with the Insurance Federation that the notification serves a critical purpose for drivers and the public by ensuring that the driver’s services with Rasier-PA do not result in circumstances of lapsed personal coverage and uninsured motorists on highways. Without such a notification procedure, an Operator could potentially jeopardize his personal coverage, and possibly car loans or leases, if his insurer deems the service to be commercially-related. Additionally, the Operator could be exposed to significant personal liability in the event of an accident or claim during the personal use of the vehicle. The time for verifying coverage limits should not be when a claim is made, but rather prior to the time that insurance coverage may be necessary. The notification provision, articulated above, is a measure to ensure such verification.

In our *October 2014 ETA Order*, we further explained the importance of the notice provision as follows:

Notwithstanding Rasier’s arguments, we believe that it is prudent and appropriate to continue the notification requirement established in our July 24, 2014 ETA Order. Contrary to Rasier’s allegations, we believe that this notice requirement provides a public safety and driver protection benefit. By Rasier’s own admission, it is on the cusp of facilitating major change in the transportation industry through the development and implementation of new and innovative technology. This development warrants transparency to all affected entities, including insurers of Rasier’s drivers. Transparency should not be sacrificed based on claims that a driver notification requirement is not convenient for transportation network operators.

Contrary to Rasier’s arguments, the notification requirement does not interject Rasier into the contractual relationship between the driver and the driver’s personal insurer. The notification requirement does not require Rasier to negotiate its driver’s personal policies, as Rasier would suggest, and does not interject Rasier into the driver/insurer relationship. Rather, the notice is intended to ensure that the driver has an understanding of any limitations regarding insurance coverage for an accident that occurs when a driver is not working for Rasier because the driver is using his vehicle.

Although the assimilation of TNC operations into the vehicle insurance market is ultimately a question to be resolved by the insurance industry, we would be remiss to allow Rasier-PA to side step this issue by not sharing such information with the drivers.  We encourage and support efforts by Uber, Rasier-PA and the auto insurance industry to create products that prevent any gap in coverage.

Fourth, consistent with 52 Pa Code § 32.11(a), Rasier-PA may only operate if its insurance carrier provides acceptable evidence of insurance (a Form E Certificate of Insurance) to the Commission. *See* *Insurance Corporation of New York v. Antrom*, 2008 Pa. Super. LEXIS 5616 (by filing the Form E certification, “the insurer certifies to the Commission that it is providing coverage in accordance with the law, notwithstanding any potentially contrary terms contained in an individual policy of insurance”). Moreover, given that Rasier-PA has a parent company of a different name, we stress that it is Rasier-PA, as the regulated utility, that must have acceptable evidence of insurance on file with the Commission. *Love-Diggs v. Tirath*, 911 A.2d 539 (Pa. Super. 2006); *Metro Transportation Co., et al. v. Pa. PUC*, *et al.*, 912 F.2d 672 (3rd Cir. 1990). The Form E Certificate shall affirm primary coverage for Stage 1 at coverage liability levels consistent with Commission regulations for motor carriers, plus $1,000,000 coverage for Stages 2 and 3 as described by Rasier-PA in its Application as amended. In no event shall the levels of coverage in any stage fall below the standards set forth in 52 Pa. Code § 32.11(b).[[23]](#footnote-23)

### Propensity to Operate Safely and Legally (52 Pa. Code § 41.14(b))

1. **Standard**

As discussed, *supra*, among the evidentiary criteria used to evaluate motor carrier applications, the Commission may evaluate “[a]n applicant’s record, if any, of compliance with 66 Pa. C.S. (relating to the Public Utility Code), this title and the Commission’s orders.” 52 Pa. Code § 41.14(b)(5).

1. **Positions of the Parties**

According to the Protestants, the most disturbing aspect of the Application concerns Rasier-PA’s operational fitness and propensity to operate legally. Concord and Executive argue that the Commission issued a direct order to the Applicant to provide testimony regarding its continued operations in response to the *Uber Order*. The Applicant refused to comply with the *Interim Order* and a Protestant filed a Motion to Dismiss. Concord and Executive Brief at 27. [[24]](#footnote-24) JB Taxi argues that the Applicant’s failure to obey the *Interim Order* without just cause has prevented the development of the record pertaining to whether the Applicant has the propensity to operate safely and legally. JB Taxi Brief at 3.

Rasier-PA argues that 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.”[[25]](#footnote-25) Rasier-PA submits that the record is replete with examples of its propensity to operate safely and legally, including obtaining a brokerage license and submitting an ETA application in response to Commission staff recommendations; compliance with the *July 2014 ETA Order*; and meeting or exceeding the requirements for authority. Rasier-PA Brief at 42-43.

Rasier-PA states that it is well established that an applicant’s prior unlawful operation does not preclude the Commission from granting authority in a subsequent proceeding. Rasier-PA opines that the Commission may grant additional authority if it finds that such unlawful operations resulted from a good-faith misunderstanding of the law. Rasier-PA notes that its witness testified that the operations that continued after the cease and desist order have been conducted by Rasier LLC, a different wholly-owned subsidiary of Uber. The Applicant explains that its witness’ understanding of the Commission’s jurisdiction and current Regulations is that the Rasier LLC activity does not address the operations under the instant Application. Rasier-PA points out that its witness also noted that Rasier-PA received emergency temporary authority the same day as the cease and desist order was issued and it was substantially in compliance with the conditions of that authority immediately. Rasier-PA Brief 45-46 (citing Tr. at 81-83). Rasier-PA argues that, under these circumstances, it would have been a travesty to pull a needed service off the market in Allegheny County. Additionally, Rasier-PA submits that neither it nor its parent or affiliates have been found by the Commission to have violated a provision of the Code or Commission Regulations. *Id*. at 44-46.

1. **Disposition**

As we discussed in the *July 2014 ETA Order*, Rasier-PA cannot completely distance itself from the ongoing Complaint proceeding involving Uber. Additionally, we are troubled by the fact that Uber’s other subsidiary, Rasier LLC, decided to continue to operate without Commission authority within Allegheny County after the issuance of the *Uber Order*. Nonetheless, we recognize that the Applicant is a separate corporate entity than Rasier LLC[[26]](#footnote-26) and that the allegations of wrongdoing by those entities have not yet been adjudicated.

Even if it were determined that the Applicant operated in violation of a Commission order, this fact, by itself, would not necessarily preclude it from obtaining lawful authority in a subsequent proceeding before the Commission. *See Brinks, Inc. v. Pa. PUC*, 500 Pa. 387, 456 A.2d 1342 (1983). In *Brinks*, the Pennsylvania Supreme Court explained that, if past unlawful operations were deemed conclusive of an applicant’s fitness, the Commission would be powerless to grant a motor carrier application despite the applicant’s demonstration of its fitness to perform services beneficial to the public.  “Such an automatic disqualification, moreover would improperly view the Commission’s statutory obligation to determine an applicant’s fitness prior to granting a contract carrier permit as a punitive measure directed against the individual wrongdoer rather than as a safeguard, the primary purpose of which is the protection of the public.”   *Id.* at 1344.  Here, there is sufficient evidence of the Applicant’s fitness independent of any finding pertaining to the actions of Uber or its other subsidiary Rasier LLC.

The standard for evaluating the Applicant is whether there is demonstrated a persistent disregard for, flouting or defiance of the Code or Commission Orders. We find that the evidence presented does not satisfy that standard. In addition, we are requiring Rasier-PA to satisfy certain conditions in order to obtain a certificate of public convenience. By taking these additional steps, Rasier-PA must demonstrate to the Commission its commitment to comply with the Code, the Commission’s Regulations and Orders. If, on the other hand, Rasier-PA fails to demonstrate its willingness to comply with the law by satisfying these conditions, no certificate will issue pursuant to this Order.

The experimental service regulation under 52 Pa. Code § 29.352 provides the Commission with leeway for approving a motor carrier service not contemplated under the regulations on a short-term basis. Section 29.352 provides time for the certificate holder to concretely demonstrate the public benefit and safety of the proposed service, as well as the ability to maintain an appropriate relationship with the Commission as the regulatory body. Pursuant to this Regulation, the Commission has flexibility to impose additional requirements on an applicant. Through this Order, we are exercising this flexibility to impose various compliance and reporting requirements as a condition of our approval of the Applicant’s operation as an experimental service. Accordingly, we view the propensity to operate safely and legally as an ongoing obligation of the Applicant during the period of its experimental service term. If the Applicant violates the conditions articulated in Appendix A of this Order, which includes the compliance and filing requirements, the Commission will take appropriate enforcement action.

Here, we do not conclude that Rasier-PA’s refusal to comply with the *Interim Order* rose to the level of *persistent* disregard for, flouting or defiance of a Commission Order. However, as discussed under Section III. B, above, we are mandating compliance with the *Interim Order* and the submission of the required trip data as a condition of the approval the Application. Furthermore, we are referring the matter of Rasier-PA’s noncompliance with the *Interim Order* during the hearing to I&E for further action as deemed appropriate.

### Financial Fitness (52 Pa. Code § 41.14(b)(1))

1. **Application**

In support of its Application, Rasier-PA submitted a one-page document titled Statement of Financial Position – Forecast from August 2014 to July 2015 (Financial Statement), which was admitted into the record. The Financial Statement is identical to the one previously submitted in support of its ETA. Tr. at 59; Rasier-PA Exh. 2.

The Financial Statement projects operating revenue of $1,914,322, total operating expenses of $3,255,819 and a net loss of $1,341, 497. Mr. Gore did not know how operating revenues and expenses were projected because the Financial Statement was prepared by Uber’s finance and accounting team on behalf of Rasier-PA. *Id.*

1. **Positions of the Parties**

In its Brief, Rasier-PA contended that affiliates of Rasier-PA provide transportation network services in over 160 cities and over 45 countries around the world. Further, it states that the proposal in the Application is based on the model successfully deployed in Washington, D.C. Based on the extensive experience of its affiliates throughout the world and the existing Commission authority of its ETA in Allegheny County, Rasier-PA argued it is presumed to have the technical and financial fitness to provide the proposed service. Rasier-PA Brief at 26 (citing Tr. at 58, 512).

In their Brief, Concord and Executive argue that the evidence of financial fitness was virtually non-existent. Concord and Executive Brief at 26. They contend that the projected operating loss results in an operating ratio which is not sustainable from a financial perspective and “suggests that the Applicant may be willing to subsidize its losses in order to engage in illegal predatory price cutting to drive its competitors out of business.” *Id.* Additionally, Concord and Executive questioned the credibility of the financial evidence pointing to the projected office expense of $2 million despite testimony that Applicant has no employees and calls the Pittsburgh office of its parent company its operational base. *Id.[[27]](#footnote-27)*

1. **Disposition**

We begin by recognizing that the Application before us requests authority to operate an experimental service. Given the experimental and start-up nature of the venture in areas previously unserved by the Applicant, it would not be unusual for Rasier-PA to incur a loss during the first year of operation.  Moreover, given the relatively short duration of the requested authority (two years), we are not convinced by the argument that the projected losses are unsustainable. By the end of the two-year certification period, both Rasier-PA and the Commission will be able to determine whether the service in question will be financially viable on a long-term basis. During the two-year certification period, of course, this Commission will not accept the argument that costs excuse Rasier-PA from providing reasonable and adequate service and facilities, as required by Section 1501 of the Code.

Our statement of policy states that we will consider “whether an applicant has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested.” 52 Pa. § 41.14(b)(1). In this case, the Applicant has or will obtain a license for the Uber App and it will use employees of Uber, pursuant to an affiliated services agreement. It has or will obtain insurance. It will not own the vehicles in question, and will not employ drivers. Considering the unique facts of this application for experimental service, we find that the Applicant has established that it has the capital, equipment, and other resources necessary to serve the territory requested.

The Applicant is wholly-owned by Uber and has access to the financial resources of the parent corporation. Moreover, we find the argument that the Applicant has successfully operated similar ventures in Washington D.C. and cities throughout the United States to be persuasive.  Accordingly, we find the Applicant has satisfied the criteria related to financial fitness.

With regard to assessment reporting requirements, Rasier-PA, its affiliates and third-party contractors shall comply with 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.

### Rates

1. **Application**

A closely related issue to Financial Fitness is the rates that the Applicant proposes to charge. In its Application, Rasier-PA explained that it proposes to offer service at no-charge or charge a fare. The Applicant stated that if a fare is charged, it will disclose the fare calculation method, the applicable rates being charged and provide the option for an estimated fare to the passenger before booking the ride. Upon completion of a trip, Rasier-PA will transmit an electronic receipt to the passenger’s email address or App documenting the details of the trip. Application at 3.

In response to the *July 2014 ETA Order*, Rasier-PA filed a tariff which indicates*, inter alia,* that rates will be calculated on the basis of the distance and time between the point of origination and the destination and includes a minimum base fare. The tariff provides that rates may increase or decrease in real time for the purpose of balancing supply and demand, such as for special events or holidays. The tariff also provides that a flat fee may be charged for trips to specific destinations and that cancellation or cleaning fees may be applied as necessary, with advance notice to the customer. Applicant Exh. 3.

1. **Positions of the Parties**

JB Taxi argues, in part, that the Commission should reject the Application because it allows surge-pricing which is not in the public interest. Under the proposal, the Applicant would be permitted to provide its service without publicly disclosing its fares in the manner required by Section 1302 of the Code, 66 Pa. C.S. § 1302. In contrast, JB Taxi argues that it, and its competitors, are required to publicly disclose fares in advance which are then subject to a lengthy Commission approval process. Additionally, JB Taxi contends that the Applicant’s refusal to accept cash would constitute an unreasonable disadvantage to a large segment of the travelling public. JB Taxi further argues that under the surge-pricing proposal the Commission will lack jurisdiction to retroactively determine the level of fare collected. Thus, it argues that fare refunds will be unavailable if an unreasonably high fare is charged which will result in price gouging of customers. JB Taxi Brief at 11-13.

During the hearing, Mr. Gore testified that rate flexibility is important to balance supply and demand and that consumers know in advance if surge pricing is in effect. Tr. at 146-148, 270. According to Mr. Gore, consumers are free to find another form of transportation if they do not want to pay the higher rates in that situation. *Id.*

1. **Disposition**

In support of its Application, the Applicant submitted a copy of its approved tariff filed pursuant to the *July 2014 Order*. The ALJs issued Findings of Fact but did not recommend a rejection of the proposed tariff. According to the proposal, Rasier-PA will advise a prospective customer of the applicable rates being charged and of the option of receiving an estimated fare before booking the ride.

The proposal has similarities with the tariff we approved in *Application of Megabus Northeast, LLC, t/a Megabus.com*, Docket Nos. A-2010-2191780 and   
A-6412531 (Order entered May 5, 2011) (*Megabus*), which involved a pricing system designed to maximize revenues in line with level of demand. In *Megabus*, the applicant established a range of rates, between $1 per trip at the low end of the range and a specified maximum rate representing the highest rate that could be charged for a specific trip between two cities. The actual passenger price depends on the date of the booking relative to the date of travel and the level of demand for the particular trip. In approving the tariff, we noted that the fare information will be publicly available and will put potential customers on notice regarding how the rates will be set so that passengers may make purchasing decisions that are appropriate for them. *Megabus*, at 11.

Although the Applicant’s proposed tariff does not contain a maximum fare amount, it provides the same level of information contained in *Megabus* that will allow passengers to make an informed decision about the rate and whether to use the service or not. We find this proposal to be reasonable. In view of the competitive nature of the TNC market, the fact that this is an application for Experimental Service and because this proposal is similar to the approved tariff filed with the authorization of Rasier-PA’s ETA, we will not require that fixed rates be set in the tariff.

Rasier-PA shall maintain a tariff with the Commission setting forth the terms and conditions of service, in a form consistent with the *July 2014 ETA Order*. As part of its Compliance Plan, Rasier-PA shall fully explain its proposed surge pricing policy during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1 *et seq*.

### Record Keeping

Rasier-PA shall maintain verifiable records of service for a period of two years after the service was provided. These records shall include: trip information (date, time, origination, destination, and fare); vehicle information under 52 Pa. Code § 29.314(c); and the identity and driver’s license numbers of all drivers.

In addition, Rasier-PA shall comply with the accident reporting requirements of 52 Pa. Code § 29.44. Consistent with this Regulation, Rasier-PA shall maintain verifiable records thereof for a period of one year from the date of the accident.

All books, records, and facilities of Rasier-PA, and of any affiliated entities as they relate to certificated services provided by Rasier-PA, are subject to Commission inspection, audit and investigation pursuant to Sections 331(a), 501 and 506 of the Code. 66 Pa. C.S. §§ 331(a), 501 and 506. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and regulations.

### Waiver of Regulations

The following Regulations for call and demand service are hereby waived unless expressly retained by this Order: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). All other Regulations applicable to call and demand service shall apply unless waived or modified by this Opinion and Order. Any Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Rasier-PA.

### Compliance Plan and Periodic Audits

Rasier-PA shall file a Compliance Plan within thirty days of the entry date of this Opinion and Order. The Compliance Plan shall demonstrate how Rasier-PA will achieve compliance with the conditions set forth in Appendix A, as described in this Opinion and Order. In no event will achievement of the conditions be accomplished later than thirty days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Rasier-PA employees, Uber employees and/or third-party contractors who will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Rasier-PA must also submit to the Commission or ensure delivery of an applicable Form E and an updated tariff consistent with this Opinion and Order.

Thereafter, the Commission will rule upon the completeness and adequacy of Rasier-PA’s Compliance Plan and the concurrent filings within thirty days. If found to be in compliance with each stated condition, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Rasier-PA to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352.

After issuance of a Certificate of Public Convenience, Rasier-PA shall submit quarterly reports demonstrating its continuing compliance with each certificate condition.

In the event that Rasier-PA declines to accept the certificate conditions specified in this Order or the Commission rejects the Compliance Plan or the concurrent filings required in this Order, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Rasier-PA in the *July ETA 2014 Order* and the *October 2014 ETA Order* shall be immediately revoked.

# Conclusion

Based upon our review of the record, and given the experimental nature of the service, we find that Rasier-PA has sustained its burden of proving a public demand or need for the proposed service and that it possesses the requisite technical and financial fitness and propensity to operate safely and legally.[[28]](#footnote-28) We have fully reviewed Rasier-PA’s ETA history as well as the record in this case, and on this basis have shaped conditions that allow for this exciting new business model to thrive in the Commonwealth, while at the same time ensuring that the necessary public protections are in place. Therefore, the authority we grant today shall not take effect until Rasier-PA has demonstrated full and complete compliance with the conditions set forth in this Opinion and Order.  If Rasier-PA rejects these conditions, it, along with any affiliates shall no longer be authorized to provide Experimental service in the Commonwealth. Accordingly, we shall grant Rasier-PA’s Exceptions, in part; reverse the Recommended Decision; and grant the Application subject to terms and conditions before Experimental Service is authorized; all consistent with this Opinion and Order. We stress that our discussion herein is limited to the Application before us and shall have no bearing on any pending enforcement actions for past conduct; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed on October 10, 2014, by Rasier-PA LLC are granted, in part, consistent with this Opinion and Order.

2. That the Recommended Decision issued on September 25, 2014, by Administrative Law Judges Mary D. Long and Jeffrey A. Watson is reversed.

3. That the Application of Rasier-PA, LLC for motor common carrier of persons in experimental service between points in Allegheny County filed on April 14, 2014, is hereby approved. The transportation authority is subject to the terms and conditions set forth herein.

4. That, within thirty (30) days of the entry of this Opinion and Order, Rasier-PA, LLC shall submit the following to the Commission:

a. A Compliance Plan demonstrating how Rasier-PA, LLC will achieve compliance with the conditions set forth in Appendix A and this Opinion and Order. The Plan shall include the identities and office locations of the employees or individuals who will be responsible for regulatory compliance.

b. A Form E Certificate of Insurance evidencing compliance with the Commission’s insurance requirements and coverage amounts set forth in this Order, *regardless* of any insurance coverage held by Rasier-PA’s drivers or operators.

c. A tariff consistent with this Opinion and Order. Instructions for filing of a tariff can be found at: [*www.puc.pa.gov/general/onlineforms/pdf/Initial\_Tariff\_Instructions.pdf*](http://www.puc.pa.gov/general/onlineforms/pdf/Initial_Tariff_Instructions.pdf).

d. An affiliated interest agreement between Rasier-PA, LLC and Uber Technologies, Inc. and any affiliates pursuant to Section 2102 Code, 66 Pa. C.S. § 2102.

e. The trip information required under the Interim Order dated July 31, 2014.

5. That, within thirty (30) days of Rasier-PA, LLC’s compliance with the filing requirements set forth in Ordering Paragraph No. 4 above, the Commission will rule upon the completeness and adequacy of the filings with respect to the requirements set forth in Appendix A and this Order. If found to be in compliance, a Certificate of Public Convenience shall issue evidencing the Commission’s approval of the right to operate as above determined.

6. That after issuance of a Certificate of Public Convenience, Rasier-PA, LLC shall submit quarterly reports to the Commission’s Bureau of Technical Utility Services demonstrating its continuing compliance with each certificate condition.

7. That in the event Rasier-PA, LLC has not, on or before thirty (30) days from the date of entry of this Order, complied with the requirements set forth in Ordering Paragraph No. 4 above, or that the filings required under Ordering Paragraph No. 4 are not approved by the Commission, the Application shall be dismissed without further proceedings and the Emergency Temporary Authority granted to Rasier-PA, LLC at Docket No. A-2014-2429993 shall be immediately revoked.

8. That the Certificate of Public Convenience will be valid until abandoned, until two (2) years from the date of issuance, or until the Commission enacts regulations governing the new class of service, whichever occurs first.

9. That the grant of Experimental Service Authority shall have no bearing on the final disposition of ongoing compliance proceedings.

10. That the certificate holder shall comply with all provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all regulations applicable to call and demand service with the exception of the following regulations which are waived: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the Certificate of Public Convenience. Additionally, the Commission will continually review the service to ensure that it is necessary or proper for the service, accommodation, convenience or safety of the public.

11. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

12. That Rasier-PA, LLC shall be subject to assessments pursuant to 66 Pa. C.S. § 510 and that Rasier-PA, LLC, its affiliates and third-party contractors shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.

13. That Rasier-PA, LLC shall maintain the records mandated in this Opinion and Order for the time periods specified for each category of records.

14. That the vehicles used in the experimental service provided by Rasier-PA, LLC shall be subject to inspection by Commission enforcement officers; and that the books, records and facilities of Rasier-PA, LLC and of any affiliated entities as they relate to certificated services provided by Rasier-PA, LLC shall be subject to inspection, audit and investigation pursuant to 66 Pa. C.S. §§ 331(a), 501 and 506.

15. That the authority granted herein, to the extent that it duplicates authority now held or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right.

16. That a copy of this Opinion and Order be served on the Commission’s Bureau of Technical Utility Services.

17. That the matter involving Rasier-PA, LLC’s noncompliance with the Interim Order dated July 31, 2014, shall be referred to the Commission’s Bureau of Investigation and Enforcement for such action as deemed appropriate.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 13, 2014

ORDER ENTERED: December 5, 2014

**Appendix A**

**Rasier-PA -- Experimental Authority Certificate Conditions**

1. **Insurance**
2. Pursuant to 52 Pa. Code § 32.11(a), a Form E Certificate of Insurance shall be filed by Rasier-PA LLC (Rasier-PA) affirming primary coverage for Stage 1 at coverage liability levels consistent with Commission regulations for motor carriers, plus $1,000,000 coverage for Stages 2 and 3 as described by Rasier-PA in its Application as amended. In no event shall the levels of coverage in any stage fall below the standards set forth in 52 Pa. Code § 32.11(b).
3. Rasier-PA shall clearly and adequately inform drivers, in writing, of the levels of insurance coverage provided during Stages 1, 2 and 3 and instruct drivers regarding the appropriate protocol to be followed in case of an accident. Rasier-PA shall maintain verifiable records thereof for three years in writing or electronic format.
4. Rasier-PA shall direct drivers, conspicuously in written or electronic form, to contact their personal automobile insurer regarding any policy impacts that may be caused by operating the vehicle for Transportation Network Company use. As part of this notification, drivers shall verify that they agree to make such contact with their personal insurer within a specified period of time. Such verification may be in written or electronic form, and must include the driver’s signature (either electronic or written). Rasier-PA shall maintain verifiable records thereof for three years.
5. **Driver Integrity**
6. Rasier-PA shall continue to undertake driver background checks of the scope and breadth described in the Application and consistent with 52 Pa. Code

§§ 29.503 and 29.505 both at the time of driver sign-up and annually thereafter. Rasier-PA shall maintain verifiable records thereof for two years.

1. Rasier-PA shall undertake drivers’ history checks consistent with 52 Pa. Code

§ 29.504 both at the time of driver sign-up and annually thereafter. Rasier-PA shall continue its “zero tolerance” policy for driver drug/alcohol use while driving, consistent with 52 Pa. Code §§ 29.506 and 29.507. Rasier-PA shall maintain verifiable records thereof for three years.

1. **Vehicle Safety**
2. Rasier-PA shall ensure that drivers’ vehicles successfully pass PennDOT inspection pursuant to 52 Pa. Code § 29.405 annually. Rasier-PA shall maintain verifiable records thereof for three years.
3. Rasier-PA shall ensure that drivers’ vehicles remain in continuous compliance with the Commission’s vehicle standards at 52 Pa. Code §§ 29.402 (1) and (2) and 29.403. Consistent with Commission Regulations, vehicles shall be subject to periodic inspection as set forth at 52 Pa. Code §§ 29.406 and 29.407. Rasier-PA shall maintain verifiable records thereof for three years.
4. Rasier-PA shall not permit the use of vehicles older than eight model years, consistent with 52 Pa. Code § 29.314(d). Rasier-PA shall maintain verifiable records thereof for three years.
5. Rasier-PA shall require that all vehicles be marked as specified at 52 Pa. Code §§ 29.71 and 29.72 while operating in Stages 1, 2 or 3.
6. **Recordkeeping, Reports and Audits**
7. Rasier-PA shall maintain verifiable records for service for a period of two years after the service was provided. These records include: trip information (date, time, origination, destination, and fare); vehicle information under 52 Pa. Code § 29.314(c); and the identity and driver’s license numbers of all drivers.
8. Rasier-PA shall comply with the accident reporting requirements of 52 Pa. Code § 29.44. Consistent with this regulation, Rasier-PA shall maintain verifiable records thereof for a period of one year from the date of the accident.
9. Rasier-PA, its affiliates and third-party contractors shall comply with the assessment reporting requirements of 52 Pa. Code § 29.43, including reporting the gross intrastate operating revenues derived from the experimental service authority regardless of the entity that collects the revenues.
10. As part of the Compliance Plan filing, Rasier-PA shall submit for Commission review an affiliated interest agreement between it and Uber Technologies, Inc. (Uber). The Agreement shall include information related to the identities and job descriptions of the Uber employees and/or third-party contractors, including the office location of those persons, who are expected to provide services to Rasier-PA during the two-year certification period.
11. As part of its Compliance Plan filing, Rasier-PA shall submit the trip information required under the Interim Order dated July 31, 2014 issued at Docket No. A-2014-2416127. Rasier-PA may mark such information as confidential pursuant to the Commission’s regulations. If marked confidential, this information will be treated according to existing Commission confidentiality practices and regulations. Any other issues related to non-compliance with the July 31, 2014 Order shall be referred to the Commission’s Bureau of Investigation and Enforcement for further action as deemed appropriate.
12. Rasier-PA acknowledges that the Commission is authorized, pursuant to 66 Pa. C.S. §§ 331(a), 501 and 506, to inspect, audit and investigate any books, records and facilities of theirs and any affiliated entities as they relate to certificated services provided by Rasier-PA. Any reports or other documents marked as confidential will be treated according to existing Commission confidentiality practices and regulations.
13. Rasier-PA shall maintain a tariff with the Commission setting forth the terms and conditions of service, in a form consistent with the Commission’s Emergency Temporary Authority Order, issued on July 24, 2014 at Docket No. A-2014- 2429993. As part of its Compliance Plan, Rasier-PA shall fully explain its proposed surge pricing policy during emergencies and natural disasters, including the applicability of Pennsylvania’s Price Gouging Act, 73 P.S. §§ 232.1 *et seq*.
14. **Waiver of Regulations**
15. The following Commission Regulations for call and demand service are hereby waived unless expressly retained by this Order: 52 Pa. Code §§ 21.2, 23.32, 23.64, 23.67, 29.62, 29.101, 29.103, 29.313(c) and (f), 29.314(b) and (c), 29.315, 29.316, 29.317, 29.318, 29.356 and 29.402(3). All other Commission Regulations applicable to call and demand service shall apply unless waived or modified by this Order.
16. Any Commission Regulations either pertaining to or referencing common carrier services other than call and demand are hereby found to be not applicable to the experimental service provided by Rasier-PA.
17. **Compliance Plan and Periodic Audits**
18. Rasier-PA shall file a Compliance Plan within thirty (30) days of entry date of this Order. The Compliance Plan shall demonstrate how Rasier-PA will achieve compliance with the conditions set forth herein. In no event will achievement of the conditions be accomplished later than thirty (30) days from the date of Commission approval of the Compliance Plan. The Compliance Plan shall identify the Rasier-PA employees, Uber employees and/or third-party contractors that will be responsible for implementing each condition. Concurrent with the Compliance Plan filing, Rasier-PA must also submit to the Commission or ensure delivery of an applicable Form E, an updated tariff and the trip information required in the Interim Order at Docket No.

A-2014-2416127 dated July 31, 2014, as specified at condition D.5.

1. The Commission thereafter will rule upon the completeness and adequacy of Rasier-PA’s Compliance Plan within thirty (30) days. If found to be in compliance with each stated condition, the Commission will approve the Compliance Plan and issue a Certificate of Public Convenience to Rasier-PA to provide experimental service for a period of two years consistent with 52 Pa. Code § 29.352.
2. After Commission approval of the Compliance Plan, Rasier-PA thereafter shall submit quarterly reports demonstrating its continuing compliance with each certificate condition.
3. In the event that Rasier-PA declines to accept the certificate conditions specified in this Order or the Commission rejects the Compliance Plan, no Certificate of Public Convenience shall be issued and the Emergency Temporary Authority granted to Rasier-PA by Order entered July 24, 2014 at Docket No. A-2014-2429993 shall be immediately revoked.

1. On October 14, 2014, Concord Limousine, Inc. (Concord), and Executive Transportation Company, Inc. (Executive) filed Exceptions to a purported “Conclusion of Law No. 7” in the Recommended Decision. On October 20, 2014, Rasier-PA filed a letter requesting that the Exceptions of Concord and Executive be disregarded as untimely because they were filed four days after the due date specified in the Secretarial Letter dated September 25, 2014. In the alternative, if the Commission considers these Exceptions to be timely filed, the Applicant incorporates its Replies to Exceptions filed in Rasier-PA’s Statewide Application at Docket No. A-2014-2424608 (Statewide Application). Upon review, the filing by Concord and Executive appears to be an error because it refers to a Conclusion of Law contained in the Recommend Decision of the Statewide Application. Therefore, it will not be considered here. [↑](#footnote-ref-1)
2. The Insurance Federation’s Replies to Exceptions are identical to those it filed in response to the Applicant’s Exceptions in the Statewide Application. They do not address the Findings of Fact and Conclusions of Law in the Recommended Decision in this proceeding. [↑](#footnote-ref-2)
3. Section 29.352 of the Commission’s Regulations, 52 Pa. Code § 29.352, which pertains to certification for the provision of experimental service, provides the following:

   § 29.352. Experimental service   
     
    In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or 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. An application for a certificate or amendment shall state that it is an application for an experimental service. Holders of experimental certificates shall abide by this chapter except those which the Commission shall explicitly state do not apply. Holders of experimental certificates shall abide by an additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate. A certificate for experimental service shall be valid only until the service is abandoned, until 2 years have elapsed from the time the certificate was approved or until the Commission enacts amendments to this chapter pertaining to the new class of service represented by the experimental service, whichever event occurs first. [↑](#footnote-ref-3)
4. *Application of Rasier-PA LLC*, Docket No. P-2014-2431743 (Order entered July 24, 2014). [↑](#footnote-ref-4)
5. *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility**Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No.

   P-2014-2426846 (Order entered July 24, 2014) (*Uber Order*). [↑](#footnote-ref-5)
6. Additional Parties were represented by counsel relative to the Statewide Application. [↑](#footnote-ref-6)
7. 52 Pa. Code § 2.245(c) provides:

   If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner. [↑](#footnote-ref-7)
8. Originally, the Statewide Application stated the proposed service would exclude trips originating or terminating at points in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Montour, Northumberland and Union. By a Restrictive Amendment and Stipulation filed on July 17, 2014, the excluded service area was expanded to exclude a portion of Luzerne County located within an airline distance of fifteen miles of the limits of the Borough of Berwick, Columbia County. [↑](#footnote-ref-8)
9. *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., For Emergency Temporary Authority to Operate An Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Docket No.   
   A-2014-2429993 (Order entered October 17, 2014) (*October 2014 ETA Order*). [↑](#footnote-ref-9)
10. While the Policy Statementis not a binding norm, it announces the Commission’s tentative intentions for the future.  *See Pa. Human Relations Comm’n v. Norristown Sch. Dist.*, 473 Pa. 334, 349-350, 374 A.2d 671, 679 (1977). [↑](#footnote-ref-10)
11. We note, however, that Concord and Executive stated, in their Brief, that they join in the Motion to Dismiss. Concord and Executive Brief at 27. [↑](#footnote-ref-11)
12. The privilege against self-incrimination, when invoked in a state proceeding, is governed by federal standards. [*Commonwealth v. Carrera*, 424 Pa. 551, 227 A.2d 627 (1967)](http://web2.westlaw.com/find/default.wl?mt=79&db=0000162&tc=-1&rp=%2ffind%2fdefault.wl&findtype=Y&ordoc=1992224014&serialnum=1967108396&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=C6C40DD8&rs=WLW14.07). [↑](#footnote-ref-12)
13. Moreover, if a witness refuses to testify or provide other information during a Commission proceeding on the basis of the privilege of self-incrimination, pursuant to Section 3302, the Commission may impose criminal penalties for such violation. 66 Pa. C.S. § 3302. [↑](#footnote-ref-13)
14. As noted by the ALJs in the Statewide Application, there are numerous Protestants to this Application that have collaborated on the presentation of evidence and argument in this matter. Statewide Application R.D. at 27. The ALJs explained that the Protestants have raised unique arguments in their opposition to the Application, but no Protestant derives an individual benefit from taking or not taking a certain position. Therefore, the ALJs stated that, unless it is relevant to a particular argument, they would not attribute any particular issue to an individual Protestant. *Id.*  We will do the same in our Opinion and Order in this proceeding. [↑](#footnote-ref-14)
15. However, we note the pending *Uber Complaint Proceeding*, which involves the issue of whether the activities of Uber fall within the definition of “broker.” Our decision herein has no impact on the determination of the unanswered question of whether, under Pennsylvania law, Uber’s licensing of its App constituted the brokering of transportation service during the time periods alleged in the *Uber Complaint Proceeding*. [↑](#footnote-ref-15)
16. *See also, Application of Frontier Van Lines Moving and Storage, Inc.*, Docket No. A-00122436 (Order entered June 29, 2007) (Commission found that the applicant established public need or demand despite the absence of witnesses for several of the counties in which the applicant proposed to provide service). [↑](#footnote-ref-16)
17. We note that the current version of Section 29.314(d) of our Regulations, 52 Pa. Code § 29.314(d), establishes an age limit of eight model years but does not impose an odometer limit for call and demand service. Pursuant to our Final Rulemaking Order in *Vehicle List, Age, and Mileage Requirements for Taxis and Limousines, 52 Pa. Code §§ 29.314(c)-(d), 29.333(d)-(e)*, Docket No. L-2013-2349042 (Order entered November 19, 2014) (*Rulemaking Order*), we approved an amendment to Section 29.314(d) to prohibit the use of vehicles in call and demand service that exceed either of the following conditions: (1) ten model years for conventional vehicles or twelve model years for alternatively fueled vehicles; or (2) 350,000 odometer miles. These amendments are subject to additional review and approval pursuant to the Commonwealth’s regulatory review process. *Rulemaking Order* at 38. When these amendments become effective, any changes shall be applicable to Rasier-PA. [↑](#footnote-ref-17)
18. Consistent with the *July 2014 ETA Order*, we will use the following terminology for reference purposes:

    * Stage 0: Driver is driving for personal reasons and the App is closed.
    * Stage 1: Driver opens the App and is logged on 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 the passenger exits the vehicle.

    [↑](#footnote-ref-18)
19. As discussed below, we will also waive additional regulations, which we consider to be inapplicable to the experimental service, consistent with 52 Pa Code. 29.352. [↑](#footnote-ref-19)
20. 66 Pa. C.S. § 2101, provides, in pertinent part:

    **(a) General rule.--**As used in this part “affiliated interest” with a public utility means and includes the following:

    (1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility.

    (2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.

    [↑](#footnote-ref-20)
21. 75 Pa. C.S. § 1711 provides in part:

    **(a) Medical benefit.--**An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title, except recreational vehicles not intended for highway use, motorcycles, motor-driven cycles or motorized pedalcycles or like type vehicles, registered and operated in this Commonwealth, shall include coverage providing a medical benefit in the amount of $5,000. [↑](#footnote-ref-21)
22. 52 Pa. Code 32.11(b) provides:

    (b) The liability insurance maintained by a common or contract carrier of passengers on each motor vehicle 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. 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). [↑](#footnote-ref-22)
23. Furthermore, we believe that the Form E filing requirement, specifying the mandatory levels of liability coverage for drivers, would supersede any inconsistent provisions contained in agreements between Rasier-PA and its Operators. [↑](#footnote-ref-23)
24. In their Brief, Concord and Executive state that they join in the Motion to Dismiss. *Id*. [↑](#footnote-ref-24)
25. Rasier-PA cites *Application of ATM Corporation of America, t/d/b/a Classic Limousine Transportation*, Docket No. A-00112166 (Order entered September 24, 1996). [↑](#footnote-ref-25)
26. The Commonwealth Court in *Rosemont Taxicab Co., Inc. v. Philadelphia Parking Authority*, 68 A.3d 29, 37 (Pa. Cmwlth. 2013), explained that the plain language of 52 Pa. Code § 41.14(b) directs a review only of the “applicant’s” compliance history. “Indeed, we have cautioned that the Commission and the courts may not disregard the independent entity of the corporate applicant.” *Id.* (internal quotations omitted). [↑](#footnote-ref-26)
27. The various Protestants filed similar arguments in their briefs. [↑](#footnote-ref-27)
28. With respect to the Protestants’ burden under 52 Pa. Code § 41.14(c), the only testimony offered about the effect of the proposed service on their operations was from representatives of Philadelphia taxicabs which are Protestants in the Statewide Application proceeding. Rasier-PA Brief at 23. The Application does not pertain to a request for experimental service in the City of Philadelphia because it would directly conflict with the jurisdiction of the Philadelphia Parking Authority pursuant to 53 Pa. C.S. §§ 5701, *et seq*. Thus, we find that the Protestants have failed to satisfy their burden of proof under Section 41.14(c). [↑](#footnote-ref-28)