

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Robert Ely</b>	:	
<b>Complainant,</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2016-2571984</b>
	:	
<b>Rasier-PA LLC</b>	:	
<b>Respondent.</b>	:	

**REPLY TO PRELIMINARY OBJECTIONS  
OF RASIER-PA LLC**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Robert Ely, Complainant responds to the Preliminary Objections filed November 15<sup>th</sup>,2016 on Behalf of Rasier-PA LLC (Rasier) . This is a timely reply, e-filed on 11/25/16 a business day.

1. Admitted
2. Denied. Because I was an Uber driver in Pennsylvania, I represent myself, and not ALL of the millions of uber drivers around the globe. Addressing this Formal Complaint of material misrepresentation of bonuses, compensation and earnings will affect the business interests myself and anyone else that owns/operates their vehicle as an intrastate common carrier of passengers on behalf of rasier in PA only.
  1. As drivers have an investment in autos and provide the labor, they are in essence, the common carriers providing the transportation of passengers. The experimental part of this class of common carrier service (TNC) is in the reality that the PUC is in essence temporarily waiving the sections of 52 PA code that A) require certificate holders to own and control operation of their vehicles. B) Common carriers of passengers must pay drivers as employees in accordance with PA/Federal minimum wage requirements and other pertinent conditions – EXCEPT in “taxi” otherwise known as call-or-demand service. (which allows a driver to lease a taxi for a flat fee C) Do not allow drivers to lease their own cars to a common carrier of passengers. D) Allow Cleaning Fees E) Allow A broker of transportation to allow vehicles without their own certificate, proper plates and registrations and other items to operate in intrastate transportation of passengers.

As all Uber PA drivers are granted authority to operate as the common carrier in experimental service with compliance through Rasier, driver/partners are not yet classified as employees or as independent contractors. As Rasier claims we are independent contractors I will accept that in my own singular capacity as a driver/partner.
  2. As a PA taxpayer and now owner of my own authority ( my authority granted post Rasier) I

believe that I have good standing to ask that Rasier pay their share for the massive increase in expenses for investigation, enforcement, promulgation of new rules and all other associated costs incurred by the PUC and the state of PA in granting and overseeing Rasier's experimental authority. Why should the taxpayers and other carriers pay for Rasier's entry into the marketplace?

3. As mentioned in reply #1 above- we are not merely drivers- we own and operate our own common carrier business when we put an Uber Placard in the window and turn the APP on. Normal, non-experimental motor carriers must file a tariff and a rate schedule that allows them a reasonable profit- so they remain solvent and able to provide proper service as a public utility.

Upon investigation of Rasier's denial of unfair compensation, I found that rasier does not have a proper rate schedule (defining exact costs of services and how they are derived) and when they filed for Tariff #2 which increased costs to passengers they were supposed to file a statement of operating revenue. I propose that all base fares, mileage increments, time increments and any other incidental charges- and flat rates and “surge price caps” be specifically defined as they are for every other utility.

To prevent Rasier from taking advantage of all of its drivers (example, me as an owner operator) A rule should be placed in their tariff that defines what percentage of total fare the driver collects after calculating average operating revenue of Rasier and comparing that with the operating revenue of the independent contractors (can be compiled from PA state or Federal Income tax returns.

Regardless of whether my idea is considered The PUC DOES have ABSOLUTE jurisdiction over the rates a common carrier charges, If the PUC wishes it, as stated in the original complaint, raise Tariff to the mean (average) charges of all other taxi/paratransit operations in the state, and set as a matter of record, Rasiers operating revenue to the mean of all other taxi/ paratransit operations. This would ensure fair competition among common carriers and provide something to pay Rasiers drivers for their time .

4. If rasier wishes to obtain permanent authority it cannot be allowed to exploit its drivers. They are the ones furnishing the equipment and time, and its predatory practice must stop.

5. The PUC has final jurisdiction and can decide whether Rasier is going to have to have “skin in the game” by operating on a level playing field. Other states consider Uber drivers as employees. The experimental class of service will define how raiser will have to act- and my complaint serves as notice.

3. Denied.- I am a consumer of the technology and needed the authority vested in Rasier by the PUC as a TNC to operate. Rasier as it states in its petition for waiver to extend it's time to continue operating dated 10/6/16 and filed by same counsel here that they ***“despite deep penetration by Rasier PA into Pennsylvania's transportation market, not a single formal complaint has been filed with the Commission by a consumer alleging issues about the safety, reliability or affordability of Rasier Pa's services.”***

The driver consumers have no idea that could complain, as they believe they are driver /partners. But nevertheless- this driver is different- here is your single formal complaint.

Passenger consumers would have a hard time filing formal complaints- and they would rarely complain about prices, at \$1.05 per mile one way, it costs less than owning and maintaining a car, per total miles.

Rasier states that I can become a taxi driver or engage in any method of for hire transportation

that I wish. I will only admit that – they are correct, as an American Citizen I can choose any profession or none, as I wish.

As far as going back to work for the cab company I left to driver for uber- Rasier's “deep penetration” into the marketplace has made that company drop 40% of it's fleet and the drivers that are left are earning way less- the cab company is now operating at a loss for the first time since it opened in 1996.

Most other motor carriers of passengers in PA are hurting due to rasier's predatory pricing model. From the petition for waiver of 10/6/16 mentioned above (if Rasier is not authorized to continue operating after January,29 2017) ***“moreover 33,000 drivers who are operating their own small businesses will be deprived of this entrepreneurial opportunity that helps them pay their monthly bills or raise their families”***

Hogwash- check their tax returns and you will find the bulk of the 33.000 (if they filed properly) are break even at best, meaning they earned “\$0” per hour. Raiser promised hourly guarantees and make difficult conditions to complete. ***Furthermore the petition states in the next paragraph that the governor and other obviously uninformed allegheny county/Pittsburgh power brokers as praising “new job opportunities for thousands”...***

Actually more cab drivers are unemployed and collecting welfare benefits instead of paying taxes, as their real world jobs were taken over by 33,000 independent contractors that can't squeak out a marginal profit at uber.

4. Denied. My standing as someone who drove his own car for Uber/Rasier is not in dispute and as Rasier charged me fees for utilizing their platform and their certificate, my standing here is indisputable. As a PA taxpayer I have standing as my taxes subsidize both the cabbies that are on “relief” and the Rasier drivers that operate at a loss. I have standing as a PA Utility owner that cannot compete against a “billion dollar bully” that uses predatory pricing practices on the backs of the poor and unformed. I am indeed the champion for all former and current uber drivers- begging the PUC to allow me a hearing where I can present ALL of the facts and figures in living color.

I am asking the PUC to look at the facts of how Rasier operates prior to granting them permanent authority. There are many things that are inherently wrong and contrary to the public good by allowing them to operate as they currently do. The balance of my reply will contain facts and exhibits proving that rasier is indeed under the jurisdiction of the PUC as a motor carrier and that the PUC has a responsibility to protect the consumers of the technology (Partner/Drivers) that supply their assets and labor on the SUPPLY side- and to protect the riding public as well, on the Demand side- which no amount of smoke and mirrors on rasier's part can ever obfuscate.

5. Admitted only because I have no clue about how to be a lawyer, Even though I don't trust them I am forced to agree.
6. Admitted. PUC as final arbiter, with the public interest in mind can draw whatever conclusions they like.

## **II. Argument**

### **A. Preliminary Objection 1: Commission Lack Jurisdiction Over the Complainants Class Action, Driver Compensation, Vehicle Ownership and Driver Status Claims**

7. There is no “class action”- except that the purported 33,000 drivers rasier has according to the petition for waiver of 10/6/16 mentioned above. Those 33,000 drivers- are only on the road

because the PUC gave rasier the authority to be able to allow us/them to be on the road “for-hire”. As my compliance and compensation package is the same as their, what affects me affects them. I represent only my own interest here.

As aforementioned PUC has absolute authority over what common carriers are allowed to charge.

As aforementioned PUC has authority from 52 pa code title 29.

8. Denied. Counsel is comparing apples to oranges- Rasier asserts that I am an independent contractor and I agree. Their argument here patently false. Using a case example of an employer/employee issue exemplifies nothing and wastes all of our time.

As aforementioned drivers are common carriers authorized to operate based on our compliance with PUC regulations granted in the experimental and temporary authority.

As a party that pays Rasier for the ability to operate as a common carrier they are under PUC jurisdiction to ensure we are solvent and can pay ourselves a reasonable wage.

I am not Rasier's employee as Rasier now states in #8

As aforementioned- The bald, vague and incomplete Tariff(s) submitted should include rates charged to passengers and rates paid to drivers for motor carrier service that allows rasier to broker the work to us.

AND PUC has jurisdiction on driver compensation pertaining to all other common carriers of passengers, what gives rasier the right to be different? If there is a specific exception, please provide it... compensation, is again 52 PA Code.

9. Denied.

Only the application for Allegheny or A-2014-2416127 mentions Operating an Experimental Ride-sharing Network.

The statewide Application- A-2014-2424608

Are worded differently. Therein lies a HUGE difference.

Allegheny authority was first, and was needed to “prove” or provide “evidencing approval” as worded in the rights, of the PUC to make Rasier legal, as they were proven to be operating illegally prior to that time. This is a serious issue that should not be forgotten.

### **DIFFERENT WORDING = DIFFERENT RIGHTS CONVEYED**

The difference is tremendous and largely unobserved by anyone because of the nascent nature of the use of apps and gps systems on the passenger end of the business. Almost certainly none of the protestants and possibly the PUC knew or even realized that switching the wording in

“Allegheny” to: “Application for a Certificate of Public Convenience Evidencing Approval to **Operate an Experimental Ride-Sharing** Network Service Between Points in Allegheny County...”

The “statewide authority” application is different- it gives rasier the right “ **to begin transport by motor vehicle, persons in the experimental service of shared-ride network** for passenger

trips between points in Pennsylvania....”

The orders may state exactly what Rasier says- but prior to permanent authority- these words need to be amended to prevent shared ride “ubers” from pirating fares from bus, trains and any other form of public transportation. Imagine if septa had 40% less riders?

I agree, also, as stated that the PUC experimented here with use of passenger vehicles. If Rasier was not allowed to take advantage of each and every single driver, and had to broker the fares to certificated carriers, they could not get away with paying “cost” for use business use of vehicles.

10. Denied. Since when are FACTS entered in a complaint impermissible and unlawful?

If you don't approve of my choice of words, I apologize, but you are dead wrong on my interpretation of the PUC's traditional means of how vehicles are obtained by common carriers of passengers. The experimental class of service is not about your APP. While novel and effective- I can have one created for about \$1,000 and run on a server for \$100 per month plus credit card clearing fees. The experimental service is allowing Rasier to use drivers with their own cars and regular passenger plates to operate as the true motor carrier on behalf of the “broker of transportation”. The PUC allows this in lieu of giving certificates to 33,000 small common carriers of passengers- Maybe the PUC should do that \$350 application fee x 33,000 drivers would be enough money to create and hire more staff to deal with this mess.

See 52 PA Code title 29.101, 29.315 These deal with leasing and compensation.

No other common carrier can use vehicles owned by a driver.

If rasier stopped flip -flopping and fumbling through the code It would see that there is no managerial discretion if drivers are independent contractors. If they are employees then they cannot use their own cars. I am not an employee and never was. The 33,000 other drivers are not employees either.. I assert again, Rasier is merely a broker with a experimental authority to allow us to use our cars. And we drivers are granted common carrier authority solely on behalf of Uber. Except in A-2014-241627 which if given permanent status will allow uber to own their own cars, and is so vague, that it could be construed and used to violate 52 code title 29.312 among other titles.

## **B. Preliminary Objection 2: The Complainant Lacks Standing to Challenge the Amount of Rasier-PA's Assessment or the Level it Charges to Customers.**

9. DENIED. (Not sure why or how this bullet is #9, but I have to use corresponding #'s. I am the Sole Owner of Call-A-Car Inc. A-6317957 . I did not need Rasier's advice to leave and drive for myself. I am a life-long cab driver and it would have been far easier and better for both Rasier and myself if they weren't greedy and decided to cut their prices to near cost as stated many times above. Their platform works well, and at a price model just below the local cabs in my area, they grew quickly.
10. Denied. So, I do, in fact have a direct, immediate and substantial interest in the subject of Rasier's Assessment. The cost of litigating, mitigating, enforcement, compliance and court time to the state has been substantial and will far surpass rasier's payment of assessments to the PUC. The cost will be spread over the rest of us motor carriers and I can obviously be seen as aggrieved.

I had a regular customer ask me to lower my taxi rate (illegal,I cannot) as uber's cost was half. When I told him I couldn't, he cried actual tears in my taxi. I had to tell him I don't blame him, and his friends for getting rides home after bar-hopping with Uber. He told me he was sorry, he like using me better than Uber.

A few weeks later, he used me, as there was a "surge". And the last time he was "surged" it cost him 4x my price. He used me again when the surge was on an again tearfully apologized.

Rasier needs to charge more to pay their drivers a living wage, as an Uber driver, they ripped me off, I was lucky to have the experience and resources to leave and start my own business. Don't misconstrue this, I tried Uber in the interim between driving a cab for someone else and becoming a cab owner. If I stayed at Rasier, my deferred maintenance expenses would have buried me.

The Predatory pricing has me spending most of my days giving out price estimates that result in 1/out 10 accepting the ride, or picking up outside my territory coming back in, as the customer has "no uber-x available" in the rural areas 10-30 miles from the city of scranton. Rasier professes to serving "underserved areas" (again from their petition for waiver dated 10/6/16) when in fact they "strand" customers where there is no service and other cab companies are not required to go to bring them back. I pick them up because I can, and I am not an APP, I serve the public need.

11. Denied. I believe I have affirmed the causal nexus and in the preceding paragraphs have shown not just a financial hardship but a personal one as well, and, (of many dozens of customers) As a driver for them I had the choice of operate at a loss or break even at best situation which paid \$0 per hour, or leave. And in leaving and opening my own business I watch daily as my customers leave because below cost transportation is just too appealing to resist.
12. Denied. The Facts are stated above--- IRS proof of deductible at 57.5c per mile.

### **IRS.gov Publication 463: *Standard Mileage Rate***

**You may be able to use the standard mileage rate to figure the deductible costs of operating your car for business purposes. For 2015, the standard mileage rate for the cost of operating your car for business use is 57.5 cents per mile.**

The numbers provided in original complaint assert that Rasier does not compensate even enough to cover this normal deduction, and has been misleading it driver/partner consumers into believing their investment of their time, effort and contribution of a vehicle to use on behalf of rasier is a profitable venture, when it is not, as explained above the PUC allowed this experimental service on conditions, it is my belief that they never thought that Rasier would exploit so many people for so much money, given that their profits are so tremendous. If we get to a hearing I will be happy to create charts and diagrams using GAAP to prove this.

As stated above, I own a Public Utility, and now I know thanks to Rasier's denial, that I can file objections against them,

13. Denied. I deny the erroneous conclusions of rasier and the specious and wrongful cases they misrepresent as being pertinent to the facts of this complaint. This complaint was entered in good faith to prevent rasier from doing these wrongful, unlawful and egregious acts, based on greed, to any other Pennsylvanian that believes also erroneously (as our Poor Governor has been misled) that Rasier

creates jobs, They take away jobs, debase industries on a wholesale level and they do it without remorse or shame.

**Conclusion:**

I believe that the PUC needs to promulgate regulations based on the merit of this complaint to protect the 33,000 drivers from being ripped off under false pretenses/ The PUC has both the jurisdiction and the means to prevent more damage being done to our transportation under false pretenses/ Uber's Ride- share isn't what they told you it would be, and Vice-President Coleman's Dissent was well founded.

Your Humble Taxi Driver,

Robert Ely

A handwritten signature in cursive script, appearing to read "Robert Ely". The signature is written in a light gray or blue ink on a white background.