

# Buchanan Ingersoll & Rooney PC

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September 26, 2017

## VIA E-FILING

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

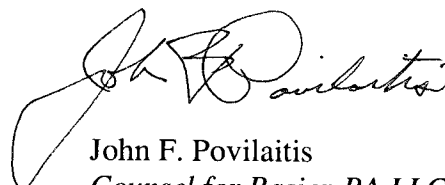
Re: Friedman Wagner-Dobler v. Rasier-PA LLC dba Uber  
C-2017-2593690

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I have enclosed for electronic filing a Motion for Leave to File Answer Nunc Pro Tunc in the above-captioned case.

If you have any questions, please feel free to contact me.

Very truly yours,



John F. Povilaitis  
*Counsel for Rasier-PA LLC*

JFP/jls  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRIEDMAN WAGNER-DOBLER	:	
	:	
v.	:	Docket No. C-2017-2593690
	:	
RASIER-PA LLC	:	

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**MOTION FOR LEAVE TO FILE ANSWER *NUNC PRO TUNC***

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Pursuant to 52 Pa. Code §§ 1.2, 1.15, 5.61 and 5.103, 52 Pa. Code §§ 1.2, 1.15, 5.61, 5.103, Rasier-PA, LLC (“Rasier-PA or the “Company”), by and through its attorneys, John F. Povilaitis, Brian C. Wauhohp and Buchanan Ingersoll and Rooney PC, moves the Pennsylvania Public Utility Commission (“Commission”) and Administrative Law Judge (“ALJ”) Katrina L. Dunderdale for an order authorizing the Company to file an Answer *Nunc Pro Tunc* as detailed below in the above-captioned proceeding. In support of this Motion, Rasier-PA states as follows:

1. This matter commenced March 14, 2017 when the Complainant, Friedman Wagner-Dobler, filed a Formal Complaint at the docket number above.

2. The Complaint appears to have been served at the Philadelphia office of the Company on approximately March 16, 2017. The Company has not been able to determine whether the Complaint was in fact received, or if received, why it was not forwarded to Rasier-PA’s legal department. The Company’s legal department became aware of the Complaint when it received a Notice of Hearing dated July 17, 2017. In August 2017, Rasier-PA engaged the undersigned legal counsel in connection with this matter.

3. ALJ Dunderdale granted Rasier-PA’s August 9, 2017 request for a continuance of the hearing scheduled August 28, 2017 to allow the parties to discuss possible resolution of the Formal Complaint.

4. The parties have discussed settlement of this matter. Without any admission of liability, Rasier-PA has provided refunds to the Complainant where overcharges were alleged for the specific rides identified in the Complaint by date and location of service.

5. However, not all elements of the Complainant's requested relief have been resolved. As such, the Company requests that the Commission allow the Company to file the Answer attached hereto as Exhibit A answering the averments in the Complaint.

6. The Commission's regulation at 52 Pa. Code § 61(a) provides that "[u]nless a different time is prescribed by statute, the Commission, or the presiding officer, answers to complaints and petitions shall be filed with the Commission within 20 days after the date of service."

7. The Commission's regulation at 52 Pa. Code § 103(a) provides that "[a] request may be made by motion for relief desired."

8. *Nunc pro tunc* is "[a] phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done." Black's Law Dictionary 1218 (4th ed. 1968). In proceedings before the Commission, parties must set forth a reason to justify the allowance of a *nunc pro tunc* filing. *See Re Dela Cab Company*, Docket No. A-99875F.1, 50 Pa. PUC 451 (December 9, 1976). For example, in *Dumas v. PECO Energy Company*, Docket No. C-2010-2175472 (May 19, 2011), ALJ Colwell permitted PECO to file an Answer to a complaint *nunc pro tunc* where PECO alleged that its computer tracking system showed the Answer as filed when, in fact, the Answer had not been filed. In *Adamthwaite v. PECO Energy Company*, Docket No. C-2008-2029752 (January 23, 2009), ALJ Smith treated an attorney's statement of a medical illness as a motion *nunc pro tunc* and granted the late filing of an Answer and New Matter and Preliminary Objection.

9. In addition, two Pennsylvania Code sections should be considered in the context of a *nunc pro tunc* request. First, 52 Pa. Code Section 1.2(a) provides that “[t]his subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” ALJ Buckley considered Section 1.2 in the context of a *nunc pro tunc* request and reasoned that “...at least at the trial level, it seems discretion as to whether to accept a filing as *nunc pro tunc* rests within the broad discretion of the individual ALJ based on the facts of the case and a showing of a reason that warrants accepting such a filing as balanced against prejudice to other parties.” *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II EE&C*, Docket No. M-2012-2334388 (Fifth Prehearing Order entered January 16, 2013) (citing 52 Pa. Code Section 1.2).

10. Second, 52 Pa. Code Section 1.15 of the Commission’s Rules of Practice and Procedure states that an extension of time may be approved upon a motion made after expiration of the specific period “where reasonable grounds are shown for the failure to act.” 52 Pa. Code Section 1.15(a)(1). In *Petition of Energy Association of Pennsylvania (“EAP”) EAP for an Expedited Order Granting an Extension of Time Nunc Pro Tunc*, Docket No. L-2008-2069115 (Order entered April 29, 2011), the Commission granted EAP’s request to file revised tariff pages after the deadline where “the regulatory review process took six months, and the revised regulations were published in the Pennsylvania Bulletin on Saturday, January 1, 2010, during a holiday weekend, it is understandable that the [event triggering the requirement to file revised tariff pages] could be inadvertently overlooked.”

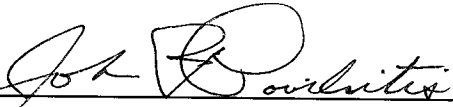
11. Here, good cause exists to allow the Company to file the attached Answer. First, the Company has no record of the Complaint having been received after service by the

Commission. The Complaint never reached the Company's legal department. The Company had no awareness of the existence of the Complaint until it received the Notice of Hearing, and once it became aware of the situation, it promptly engaged counsel and sought leave to discuss resolution of the matter with the Complainant. Some of Complainant's requests for relief have been satisfied by the Company. The Company took action to address the Complaint once the Complaint's existence was known. Second, the hearings have not yet commenced in this proceeding, so there is no injury to any party's substantive rights. Third, the public interest is served by allowing a respondent to participate in the administrative process to ensure that its perspective is fully developed as part of the record. Finally, no party would be prejudiced by the Company filing the Answer. As discussed above, the Company has already provided part of the relief demanded in the Complaint.

WHEREFORE, Rasier-PA respectfully requests that the Commission (i) grant this Motion to File Answer *Nunc Pro Tunc*; and (ii) grant Rasier-PA any other relief as appropriate.

Dated: September 26, 2017

Respectfully submitted,

  
\_\_\_\_\_  
John F. Povilaitis, Esquire  
Brian C. Wauhop, Esquire  
BUCHANAN INGERSOLL & ROONEY PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101-1357

*Counsel for Rasier-PA, LLC*

# **EXHIBIT A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>FRIEDMAN WAGNER-DOBLER</b>	:	
	:	
v.	:	<b>Docket No. C-2017-2593690</b>
	:	
<b>RASIER-PA LLC</b>	:	

**ANSWER OF RASIER-PA  
TO THE COMPLAINT OF FRIEDMAN WAGNER-DOBLER**

**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

AND NOW, Rasier-PA LLC (“Rasier-PA”, “Uber” or the “Company”), by and through its counsel, John F. Povilaitis, Brian C. Wauhoh and Buchanan Ingersoll & Rooney PC, answers the above-captioned Formal Complaint (“Formal Complaint”) pursuant to Section 5.61 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.61, as follows:

1. Admitted. It is admitted that the Complainant’s name and address, as represented by the Complainant, are set forth in this paragraph.
2. Admitted. It is admitted that the Formal Complaint concerns Rasier-PA.
3. Denied. It is denied that the Company provides motor carrier services. On the contrary, the Company provides transportation network company (“TNC”) services under Commission license, in accordance with all lawful authorizations previously provided by and received from the Commission.
4. Denied. After reasonable investigation, the Company is without information or knowledge sufficient to form a belief as to why the Complainant checked the box next to the word “Other” on the Formal Complaint form, and demands proof thereof, if relevant, at hearing.

5. For purposes of this Answer, the relevant phrases, sentences, and/or paragraphs appearing in this paragraph of the Formal Complaint have been restated and are answered as follows:

- A) Refund the excessive amounts charges on 10 March (\$11.55) and 13 March (\$11.37) and for identical trips after those dates.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(A) above could be construed to contain an allegation of fact, such allegation is denied. By way of further response, without any admission of liability, the Company has refunded the Complainant the amounts demanded in Paragraph 5(A).

- B) Audit all my past trips to determine any additional excessive amounts charged, and refund such amounts.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(B) above could be construed to contain an allegation of fact, such allegation is denied. By way of further response, based on information and belief, the Company has correctly charged the Complainant for rides to the extent estimates of charges have been provided.

- C) Audit all Uber trips by any consumers in Pennsylvania to determine excessive amounts charged, and refund such amounts.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(C) above could be construed to contain an allegation of fact, such allegation is denied. By way of further response, Paragraph 5(C) demands class action relief, a type of action and relief neither the Public Utility Code (“Code”) nor Commission regulations authorizes the Commission to grant.

**D) Correct the algorithm Uber uses to calculate fares, and ensure that if the actual trip is significantly shorter than the quoted trip, only the amount appropriate to the actual trip is charged.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(D) above could be construed to contain an allegation of fact, such allegation is denied. By way of further response, the Code explicitly states that fares or charges for transportation network service “shall not be subject to review or approval by the commission.” 66 Pa.C.S. § 2607(f).

**E) Correct the algorithm Uber uses to calculate fares, such that the fare is recalculated when the user moves the pickup point.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(E) above could be construed to contain an allegation of fact, such allegation is denied. By way of further response, the Code explicitly states that fares or charges for transportation network service “shall not be subject to review or approval by the commission.” 66 Pa.C.S. § 2607(f).

**F) Suspend Uber’s license until such time that Uber demonstrates that its charges conform with Uber’s published pricing.**

This paragraph is a demand for relief to which no response is necessary. To the extent the sentence in Paragraph 5(F) above could be construed to contain an allegation of fact, such allegation is denied.

The relevant phrases, sentences, and/or paragraphs appearing in the documents attached to the Formal Complaint have been restated and are answered as follows:

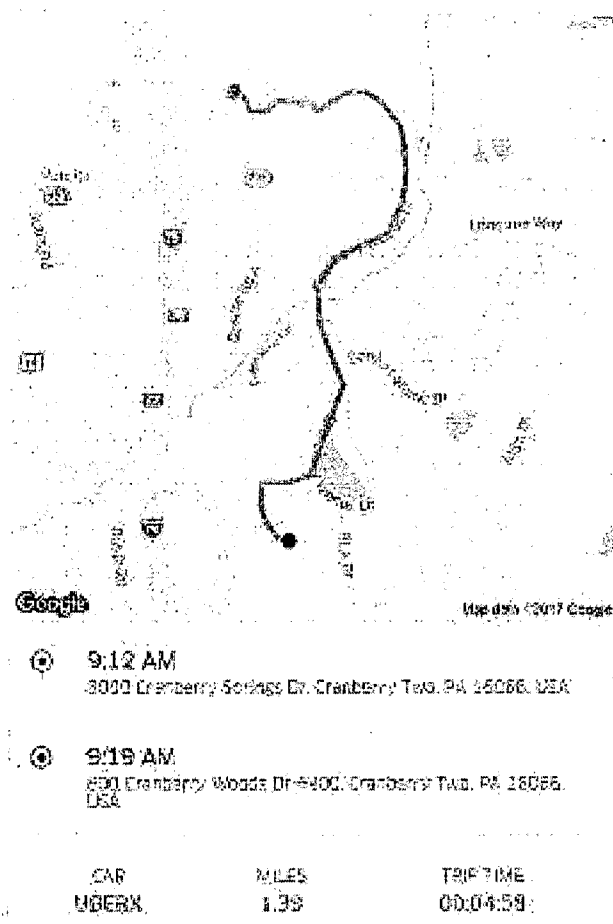
**Friedman Wagner-Dobler vs Uber – Attachment**

Uber overcharges customers in certain circumstances where there is a difference between the proposed routing of a trip, and the actual routing. I have experienced this on multiple occasions. I believe it's likely that thousands of Uber customers are affected every day. The impact is that while customers may believe they are paying Uber's published fares, they are actually being charged more – in some cases much more. My experiences below show that I was repeatedly charged for a 12-mile trip when I only travelled a mile and a half.

Denied. It is denied that Uber overcharges customers in certain circumstances when there is a difference between the proposed routing of a trip that is reflected in the estimated charge and the actual trip. On the contrary, Uber customers are provided an estimate of the ride prior to beginning the ride, and Uber customers are completely free to cancel the ride if they choose. After reasonable investigation, the Company is without information or knowledge sufficient to form a belief regarding the truth of the remaining averments contained in this paragraph and as a result, those averments are denied and the Company demands strict proof at hearing.

## First Case

On February 24, 2017, I ordered an Uber to go from UPMC Lemieux Sports Center to 800 Cranberry Woods. As the trip receipt shows, this is a short trip that took less than five minutes for a distance of 1.39 miles:



Uber advertises the following fare structure:

uberX

THE LOW-COST UBER

Base Fare	\$1.30	Booking Fee	\$1.80
Per Minute	\$2.15	Minimum Fare	\$7.30
Per Mile	\$1.05	Cancellation Fee	\$5.00

**SIGN UP TO RIDE** →

Your fare will be the price presented before the trip or based on the rates above and other applicable surcharges and adjustments.

However, I was charged a fare of \$18.35. No surge pricing was in effect. The correct fare for this trip is:

Base Fare \$1.30

Five Minutes \$0.75

Two Miles \$2.10

Booking Fee \$1.80

Total \$5.95 (i.e. Minimum Fare \$7.30)

In a series of emails, the company said that I had accepted the fare when I ordered the Uber. They also repeatedly denied a partial refund, even after I provided the following explanation:

I went to <https://www.uber.com/fare-estimate/> and entered the following locations:

Lemleux sports complex, Cranberry Springs Drive, Cranberry Township, PA  
NetApp Inc, Cranberry Woods Drive, Cranberry Township, PA

This shows a fare of \$16-\$22 because it results in a ludicrous 12-mile trip up the freeway and then back down again. That is obviously not what happened here. (Remember that the trip was 1.4 miles)

UBER Ride Drive Cities

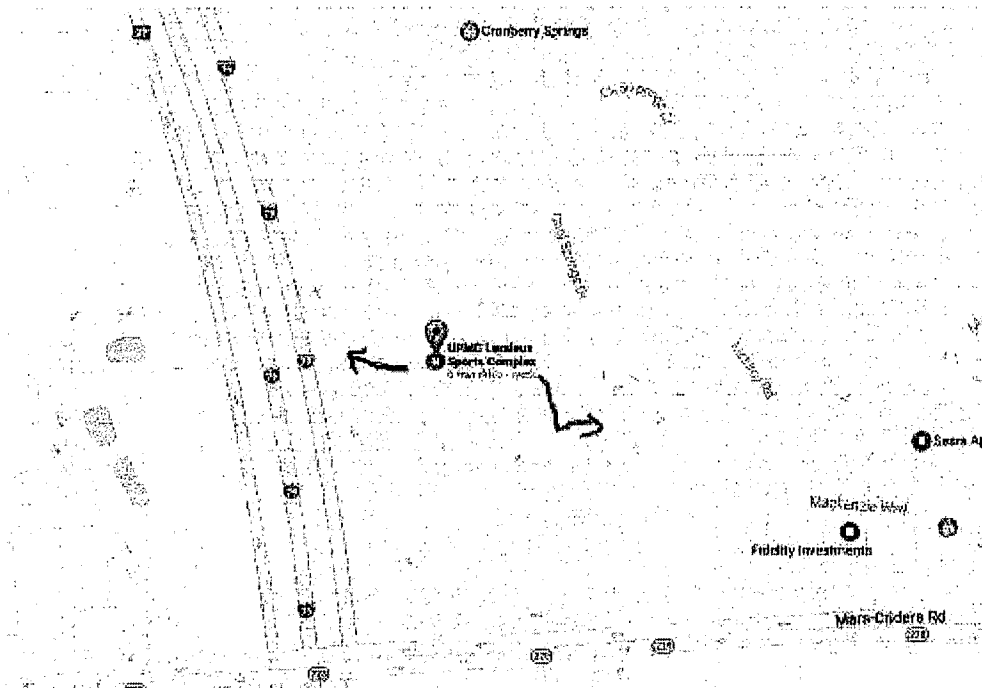
Lemleux sports complex, Cranberry Springs  
Ne5App Inc, Cranberry Woods Drive...

Your Options:

uberX	\$16-22
uberXL	\$26-34
PREMIUM	\$36-48

Sign up to ride

If you look at the map, because the Lemleux sports complex is close to the freeway spur, your minimum pricing assumed the route shown with the red arrow in the attached picture. It should have assumed the blue arrow.



Now - your geolocation algorithm is frequently faulty, because it picks the nearest road from the center of the property, not the front door or other access point. I'm sure you've had many thousands of complaints about this already.

In this case, your faulty geolocation resulted in a minimum fare that was silently imposed, when the actual trip data shows that your algorithm is *wrong*. The fact that your pricing algorithm does not sanity check the trip data likely means that you are defrauding your customers of hundreds of thousands of \$\$\$. This is outrageous and I will therefore definitely file a complaint.

Despite this analysis Uber continued to refuse to provide a partial refund. I filed an informal appeal with the PUC, and was then immediately provided with a refund and the following explanation from Jennifer Krusius (Uber Pittsburgh):

*We received your complaint through the PUC for your trip on February 24, where you were charged \$18.35. Thank you for reporting this - we were able to track down the GPS route with our mapping department and update the map with the new construction that has been completed in the area. The fare you should have been charged was \$7.44, and we have refunded the difference to your credit card, which should appear in a few days.*

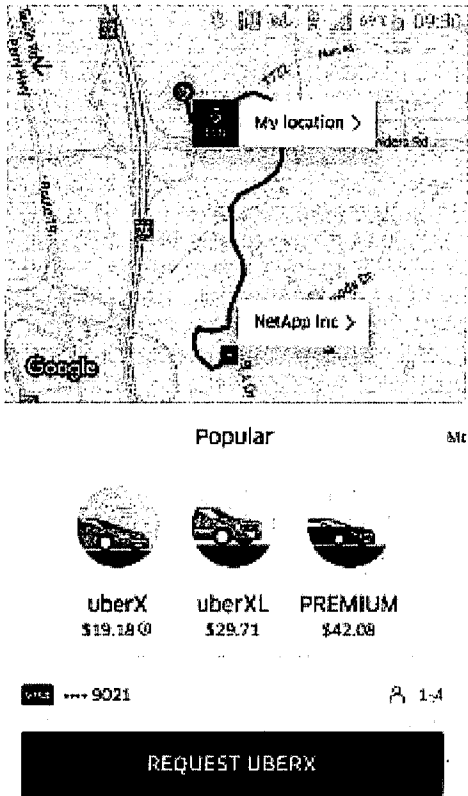
Subsequent events demonstrate the clause in italics to be untrue. It's also not clear why I was charged more than the minimum fare (\$7.44 instead of \$7.30).

Admitted in part and denied in part. It is admitted that Rasier-PA provided Complainant TNC services on February 24, 2017. It is also admitted that Rasier-PA provided a refund for a

portion of the charges for this trip. To the extent the remainder of this paragraph contains allegations of fact, they are denied.

## Second Case

On March 6 at 9:30 I attempted to order an Uber. I saw the following display:



This proves that even though the displayed routing is correct, the routing used to calculate the fare is the 12-mile route via Zellenople. It is of very considerable concern that

- The app displays one route while charging the user for another, much longer route
- The app appears to pick the route for pricing when it starts, and does not change it to a shorter route even if the user moves the pickup point to a position that makes the route shorter

On this occasion I managed to find a Lyft and did not use Uber.

I should perhaps note that I have taken the same trip with Lyft, and I have not had a problem with the fare calculation, both because the Lyft map is more correct and because Lyft recalculates the fare when the pickup is moved. However, on this and other occasions Lyft did not have enough cars on the road.)

I should also note that on one occasion I tried at least half a dozen times to coax the app into providing sensible pricing for the 1.5 mile trip, but kept getting a price around \$18.

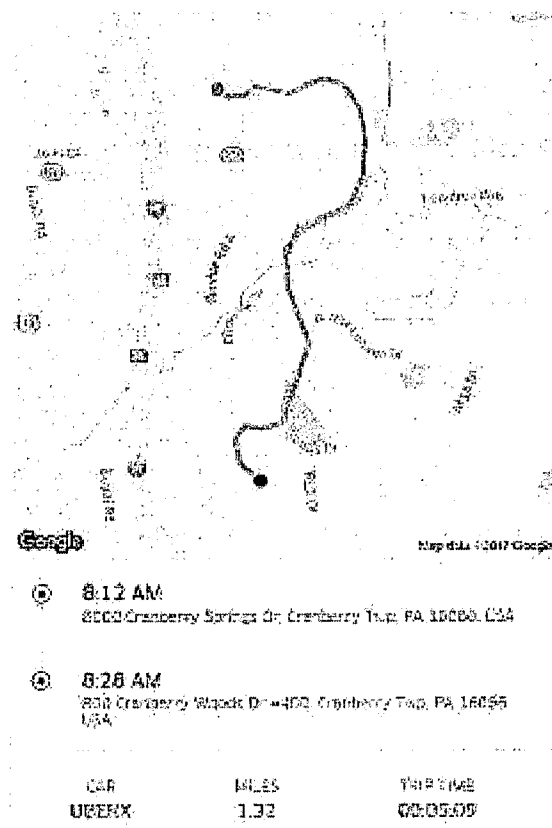
Admitted in part and denied in part. It is admitted that Rasier-PA provides estimated charges and routing which the rider may or may not accept. By way of further

response, charges may be calculated on the basis of the distance and/or time, and include a minimum base fare and other costs. Rates may increase or decrease in real time, including for the purposes of balancing supply and demand. To the extent the remainder of this paragraph contains allegations of fact, they are denied.

### Third Case

On March 10, 2017 at 8:12am I again ordered an Uber for the exact same trip. As the trip receipt shows, this trip took just over five minutes and measured 1.32 miles:

I was charged a fare of \$18.85



### FARE BREAKDOWN

Trip fare	18.85
<b>Subtotal</b>	<b>\$18.85</b>
CHARGED	<b>\$18.85</b>
visa Personal **** 9021	

I again repeatedly requested a refund, noting the previous PUC complaint. This request was denied.

Admitted in part and denied in part. It is admitted that Complainant was charged on March 10, 2017 the estimated charges that were accepted. To the extent the remainder of this paragraph contains allegations of fact, they are denied.

**Fourth Case**

On Monday, March 13, at 8:19am, I took the same trip again. It was recorded at 1.34 miles and 5:53. I was charged \$18.67. Once again, I should have been charged the minimum fare of \$7.30. I hereby request a refund of \$11.37.

**FARE BREAKDOWN**

Trip fare	18.67
<b>Subtotal</b>	<b>\$18.67</b>
CHARGED	
Personal **** 9021	<b>\$18.67</b>

CAR	MILES	TRIP TIME
UBERX	1.34	00:05:53

8:10 AM  
Coul Springs Cr. Cranberry Twp, PA 16066, USA

8:25 AM  
800 Cranberry Woods Dr 4430, Cranberry Twp, PA 16066, USA

Admitted in part and denied in part. It is admitted that Complainant was charged on March 13, 2017 the estimated charges that were accepted. To the extent the remainder of this paragraph contains allegations of fact, they are denied.

### One successful Ride

Finally, I'd like to note that on one occasion (3 March) I was charged a correct fare:

**YOUR TRIP**  
9:48 AM on March 3, 2017

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**FARE BREAKDOWN**

Tribe fare	7.30
<b>Subtotal</b>	<b>\$7.30</b>
<b>CHARGED</b>	
visa Personal **** 9021	<b>\$7.30</b>

**9:48 AM**  
800 Cranberry Springs Ln, Cranberry Twp, PA 16066, USA

**9:59 AM**  
800 Cranberry Woods Dr #400, Cranberry Twp, PA 16066, USA

CAR	MILES	TRIP TIME
UBERX	1.54	00:05:10

Sadly, this was an exception to the rule, and only happened after repeatedly restarting the app.

Admitted in part and denied in part. It is admitted that Rasier-PA provided the Complainant TNC services on March 3, 2017. To the extent the remainder of this paragraph contains allegations of fact, they are denied.

6. Denied. After reasonable investigation, the Company is without information or knowledge sufficient to form a belief regarding whether or not a Protection from Abuse order has been granted in favor of the Complainant and demands proof thereof, if relevant, at hearing.

7a. Admitted. It is admitted that the Complainant did not file an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") prior to filing the Formal Complaint.

7b. Admitted.

7c. No Response Provided by Complainant.

8. Not applicable.

9. Not applicable.

10. Not applicable.

**WHEREFORE**, Rasier-PA hereby requests that the Complaint of Friedman Wagner-Dobler be dismissed with prejudice, and that the Commission grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: September 26, 2017

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John F. Povilaitis  
Brian C. Wauhop  
BUCHANAN INGERSOLL & ROONEY PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101-1357  
(717) 237-4975

Attorneys for Rasier-PA LLC

**VERIFICATION**

I, Kathryn Ciano, Senior Regulatory Counsel of Rasier-PA LLC, hereby verify that the information in the foregoing Motion for Leave to File Answer *Nunc Pro Tunc* filed at Docket No. C-2017-2593690, is true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.

  
Signature

Dated: September 25, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRIEDMAN WAGNER-DOBLER	:	
	:	
v.	:	Docket No. C-2017-2593690
	:	
RASIER-PA LLC	:	

**CERTIFICATE OF SERVICE**

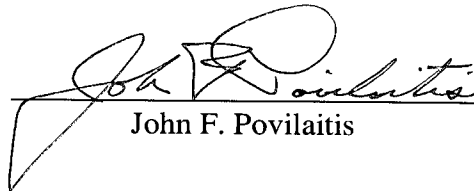
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via First Class Mail and Email**

Katrina L. Dunderdale  
Administrative Law Judge  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222

Friedman Wagner-Dobler  
5729 Walnut Street  
Pittsburgh, PA 15232  
[friedmanwd@gmail.com](mailto:friedmanwd@gmail.com)

Dated this 26th day of September, 2017.

  
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John F. Povilaitis