

Buchanan Ingersoll & Rooney PC

Karen O. Moury

717 237 4820
Karen.moury@bipc.com

409 North Second Street, Suite 500
Harrisburg, PA 17101
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

April 27, 2015

VIA E-FILING

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

Re: Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience Evidencing Approval to Operate an Experimental Service of Shared-Ride Network for Passenger Trips Originating or Terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Luzerne, Lycoming, Mercer, Montour, Northumberland and Union; Docket No. A-2015-2469287

Dear Secretary Chiavetta:

On behalf of Rasier-PA LLC, I am electronically filing the Preliminary Objections to the Protest of MTR Transportation, Inc., t/d/b/a K-Cab Co., in the above-captioned proceeding.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr. (via First Class mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
Subsidiary of Uber Technologies, Inc. for a :
Certificate of Public Convenience Evidencing :
Approval to Operate an Experimental Service of :
Shared-Ride Network for Passenger Trips : Docket No. A-2015-2469287
Originating or Terminating in the Counties of :
Beaver, Clinton, Columbia, Crawford, Lawrence, :
Luzerne, Lycoming, Mercer, Montour, :
Northumberland and Union :

NOTICE TO PLEAD

TO: Lloyd R. Persun, Esquire
Persun & Heim, P.C.
P.O. Box 659
Mechanicsburg, PA 17055-0659

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections to the Protest of MTR Transportation, Inc., t/d/b/a K-Cab Co. within **ten (10) days** from service of this Notice, the facts set forth by Rasier-PA LLC in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Rasier-PA LLC, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: April 27, 2015



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
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Beaver, Clinton, Columbia, Crawford, Lawrence, :
Luzerne, Lycoming, Mercer, Montour, :
Northumberland and Union :

**PRELIMINARY OBJECTIONS TO THE PROTEST OF
MTR TRANSPORTATION, INC., T/D/B/A K-CAB CO.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Rasier-PA LLC, a wholly owned subsidiary of Uber Technologies, Inc. (“Rasier-PA”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files these Preliminary Objections pursuant to Section 5.101(a) of the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.101(a)(4) and (7), moving for dismissal of the protest filed by MTR Transportation, Inc., t/d/b/a K-Cab Co. (“Protestant”) and in support thereof, avers as follows:

I. Introduction

1. Rasier-PA seeks dismissal of Protestant’s protest on the basis of the Commission’s prior orders approving Rasier-PA’s applications to fully operate an experimental service of shared-ride network service for passenger trips (“transportation network services”) for the vast majority of Pennsylvania, excluding Philadelphia. *Application of Rasier-PA LLC for Allegheny County Authority*, Docket No. A-2014-2416127 (Order entered December 5, 2014) (“December 5 Allegheny County Order”); *Application of Rasier-PA LLC for Statewide Authority*, (“statewide application”), Docket No. A-2014-2424608 (Order entered December 5, 2014) (“December 5 Statewide Order”).

2. Since the pending application would merely expand Rasier-PA's existing (nearly stateside) operating authority to provide transportation network services in a relatively small number of previously excluded counties, and the Commission addressed all of the relevant issues regarding public need for the proposed service and Rasier-PA's fitness to provide this service less than five months ago, no useful public purpose would be served by holding evidentiary hearings and delaying the delivery of innovative and competitive transportation alternatives to the public in these areas. This is particularly true since the protest has offered no specific reasons to engage a review of public need, fitness or the effect on existing carriers of the proposed service and merely seeks to foster the monopolistic protection of the traditional transportation industry.

3. Rasier-PA further seeks dismissal of Protestant's protest on the grounds that Protestant lacks standing. Protestant's authority to operate as a call or demand carrier does not present an actual or potential conflict with Rasier-PA's proposed services. Therefore, consistent with the Commission's well-established precedent, Protestant lacks standing and its protest must be dismissed in its entirety. Moreover, the protest should be dismissed on the basis that it is an insufficient pleading because it fails to contain the information required by the Commission's regulations.

4. The Commission should expeditiously approve Rasier-PA's application to provide transportation network services in the counties previously excluded from its statewide application. Through this application, Rasier-PA proposes to expand its use of a digital platform to connect passengers to independent drivers, with whom it contracts. Under Rasier-PA's existing service, riders request transportation through the Internet or a mobile application ("App") on their smartphones, and drivers use their own personal, non-commercially licensed vehicles for the purpose of providing transportation services. When a driver responds to the

request, the passenger receives the vehicle type and a photo of the driver, along with an indication of the driver's current location and estimated time of arrival. Drivers may not solicit or accept street hails. Rasier-PA discloses the fare calculation method, the applicable rates being charged, and the option for the passenger to obtain an estimated fare before booking the transportation. Upon completion of a trip, an electronic receipt is transmitted to the passenger's email address or App documenting the details of the trip and contact information for the Commission that may be used to file a complaint.

5. Technology has enabled Rasier-PA to offer innovative services to passengers in Allegheny County and throughout Pennsylvania that are not available from traditional transportation providers. By relying on a digital platform, Rasier-PA is able to efficiently and economically connect passengers with drivers. Through Rasier-PA's proposed service, passengers in counties now excluded from Applicant's statewide certificate would gain access to safe, reliable and affordable transportation alternatives that fill voids in the existing infrastructure. Those areas are in as much need of adequate transportation options as the other parts of Pennsylvania. Further, affording Rasier-PA the ability to more freely move throughout Pennsylvania would benefit the riding public.

6. In addition, Rasier-PA's services are responsive to consumers who wish to have a choice about the way they are transported. The availability of Rasier-PA's services in the specified counties would allow passengers to request transportation services through the Internet or App rather than by street hail or telephone, which many passengers find to be convenient and preferable to traditional taxicab service.

7. Pointing to the use of an App-based technology as allowing for wider ranging, faster and more user friendly scheduling of transportation, the Commission has previously recognized similar services as being sufficiently distinguishable from limousine and call or

demand service so as to qualify for the separate classification of common carrier authority known as experimental service under the Commission's regulations.

8. Given the Commission's flexible approach in the *December 5 Statewide Order* regarding the applicability of the public need or demand standards to transportation network services; its findings that the services proposed by Rasier-PA would be responsive to public demand and serve a useful public purpose; its conclusions that the services proposed by Rasier-PA would provide compelling societal benefits, and its determination that Rasier-PA is fit to offer these services, it would be a waste of administrative resources to hold evidentiary hearings on the pending application to determine whether there is a need for the proposed service and whether Rasier-PA is fit to provide the proposed service.

9. Therefore, for reasons noted above and more fully described below, the Commission should dismiss the protest and approve the application.

II. Background

10. On February 27, 2015, Rasier-PA filed the pending application, pursuant to 52 Pa. Code § 29.352, requesting approval to provide transportation network services originating or terminating in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Luzerne, Lycoming, Mercer, Montour, Northumberland and Union.

11. The Commission's regulations establish "experimental service" as a classification of passenger carrier service that is separate and apart from limousine service, call or demand service, group and party service, airport transfer service, paratransit service and scheduled route service, and describe it as follows:

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.

52 Pa. Code § 29.352 (emphasis added).

12. Rasier-PA already holds experimental authority to provide transportation network services between points in Pennsylvania, excluding the Counties of Allegheny, Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Montour, Northumberland, Philadelphia and Union and in that portion of the County of Luzerne which is located with an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County. *December 5 Order*. Upon approval of Rasier-PA's compliance plan by Order entered on January 29, 2015, a certificate of public convenience was issued on the same date.¹

13. By this application, Rasier-PA is seeking approval to expand its transportation network services on an experimental basis to include the eleven counties previously excluded from the statewide application. Rasier-PA previously excluded specific counties from its statewide application in an effort to avoid the filing of protests and to cause the withdrawal of protests that were filed, with the objective of streamlining the approval process.. However, several protests remained in opposition to the applications, which were ultimately approved by the *December 5 Allegheny County Order and December 5 Statewide Order* following a fully litigated proceeding that included evidentiary hearings, the filing of briefs, the issuance of a recommended decision, and the filing of exceptions.

14. Notice of Rasier-PA's application was published in the *Pennsylvania Bulletin* on March 21, 2015. Protests were due by April 6, 2015.

15. Protestant filed a timely protest, asserting that it holds various operating authorities from the Commission, including a certificate of public convenience to provide call or

¹Rasier-PA also holds experimental authority to provide transportation network services between points in Allegheny County. *December 5 Allegheny County Order*. Prior to that approval, Rasier-PA provided transportation network services between points in Allegheny County pursuant to emergency temporary authority granted by the Commission by Order entered on July 24, 2014 at Docket No. A-2014-2429993 and a certificate of public convenience issued on August 21, 2014.

demand service between specified points in the Counties of Columbia, Montour and Northumberland. The protest further avers that it has filed an application to provide transportation network services between specified points in Pennsylvania, including the Counties of Columbia, Luzerne, Montour and Northumberland.

16. Under Section 3.381(c)(1)(C) of the Commission's regulations, Rasier-PA's may file motions to strike or dismiss within twenty days after the closing date for the filing of protests, or by April 27, 2015. 52 Pa. Code § 3.381(c)(1)(C).

17. Through these timely-filed Preliminary Objections, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(3)(4) and (7), Rasier-PA seeks dismissal of Protestant's protest on the grounds that the protest is a legally insufficient pleading that fails to state a claim upon which relief may granted; the Protestant lacks standing to participate in the proceeding, and the protest lacks sufficient specificity because it fails to set forth the information that is required by the Commission's regulations.

III. Legal Standards Applicable to Preliminary Objections

18. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

19. The grounds for preliminary objections are limited to those set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.

- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

20. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, supra.

21. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa.Cmwlth. 2007).

IV. Argument

A. Preliminary Objection No. 1: Legal Sufficiency of Pleading

22. The protest should be dismissed pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(4) on the basis that it is a legally insufficient pleading and fails to state a claim upon which relief may be granted. A hearing is not necessary and would not serve the public interest in this matter. *See* 66 Pa.C.S. § 703(b).

23. The Commission's policy statement at 52 Pa. Code § 41.14 establishes the evidentiary criteria that are relied upon in deciding motor common carrier applications. Under that policy statement, an applicant "has a burden of demonstrating that approval of the

application will serve a useful public purpose, responsive to a public demand or need.” 52 Pa. Code § 41.14(a). Specifically, the applicant “has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service” and “authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.” 52 Pa. Code § 41.14(b). As noted in the policy statement, “[t]he Commission will grant 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.” 52 Pa. Code § 41.14(c).

24. Rather than making factual averments necessitating a hearing, the protest offers vague claims about public need, fitness and effect on existing carriers, none of which warrant the scheduling of a hearing, particularly in view of the findings in the Commission’s *December 5 Statewide Order* and the limited expansion of transportation network services authority requested by this application.

25. The protest’s general allegations regarding public need do not present sufficient information to warrant a hearing or further consideration by the Commission. In the *December 5 Statewide Order*, the Commission found that Rasier-PA’s proposed transportation network services would be responsive to a public demand and need and further recognized that substantial benefits will be derived from the initiation of its competitive service. Specifically, the Commission observed, “[w]e 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.” *December 5 Statewide Order* at 26-27. The Commission

also highlighted the compelling societal benefits to consumers who are blind or visually impaired.

26. Notably, the Commission found that “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.” *December 5 Statewide Order* at 26. Citing the unique nature of the proposed experimental service, the Commission did not believe it was necessary for Rasier-PA to present a large evidentiary showing of need and emphasized that the fact that the experimental certificate is valid only for two years which will give Rasier-PA an opportunity to establish market demand for the new service. *December 5 Statewide Order* at 27.

27. Further, in finding that the service proposed by the statewide application would fulfill some useful public purpose and be responsive to public need and demand, the Commission recognized that 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, the Commission observed that 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); *Purcolator Courier Corp. v. Pa. PUC*, 414 A2d 450 (Pa. Cmwlth Ct. 1980). *December 5 Statewide Order* at 26.

28. Therefore, although Rasier-PA did not present witness support for each of the proposed counties of service, the Commission was satisfied that it had “provided a sufficient cross section of witness testimony relevant to public need and demand throughout the requested service areas.” *December 5 Statewide Order* at 26. The Commission concluded that Rasier-PA’s evidence supported its contention “that a substantial benefit will be derived from the initiation of its competitive service.” *Id.*

29. Since the Commission has already determined that the proposed service would be responsive to public need and demand throughout Pennsylvania, serve a useful public purpose and provide substantial benefits to the public, no useful purpose would be served by holding evidentiary hearings in this proceeding that are aimed at considering evidence of individual need for the proposed service. Imposing a burden on Rasier-PA to demonstrate individual need in the eleven counties covered by this application would be contrary to the findings in the *December 5 Statewide Order* and result in a waste of administrative resources.

30. Moreover, allowing existing carriers to challenge the application and delay the delivery of transportation network services to the previously excluded counties is contrary to the Commission's recent policy announcements where the Commission has recognized the value of deferring to the market place as to whether new services are needed. Specifically, eliminating the outdated and lengthy application process in the household goods moving industry, the Commission touted the benefits of increased competition, customer choice and job creation. *Final Rulemaking Amending Regulations Applicable to Household Goods in Use Carriers*, Docket No. L-2013-2376902 (Order entered June 19, 2014). Those laudable goals are equally beneficial to the transportation network services industry. The Commission also does not consider whether the entry of a new limousine carrier into the field would endanger or impair the operations of existing providers. 52 Pa. Code § 41.14(d).

31. Additionally, while the protest makes a bald assertion about Rasier-PA's lack of fitness to provide the proposed service, it raises no specific issues about Rasier-PA's legal, financial or technical fitness to provide the proposed service. The Commission has found that a protest's general allegations regarding fitness fail to provide a basis for scheduling a hearing. *See Application of Distribution Freight Systems, Inc.*, Docket No. A-00107826, 1988 Pa. PUC Lexis 102 (January 28, 1988). These vague claims also ignore the well-established precedent

that existing carriers are presumed to possess the technical, financial and legal fitness to obtain additional operating authority. *See South Hills Movers, Inc. v. Pa. P.U.C.*, 601 A.2d 1308 (Pa. Cmwlth. Ct. 1992).

32. Notably, less than five months ago, the Commission found Rasier-PA to be legally, financially and technically fit to provide transportation network services on nearly a statewide basis. *December 5 Allegheny County Order* and *December 5 Statewide Order*. The protest points to nothing that has occurred to alter those findings. To the contrary, since that time, Rasier-PA has expanded its operations beyond Allegheny County and is now successfully providing transportation network services throughout Pennsylvania. Holding another series of evidentiary hearings to examine Rasier-PA's fitness, particularly in the context of such a narrow application to expand existing authority, would serve no public purpose and would be a waste of administrative resources.

33. Further, although the protest makes an ambiguous claim about the entry of a new carrier impairing operations of existing carriers, the protest offers no specific details about how that would occur, especially when Protestant does not currently have authority to provide transportation network services. In any event, the potential effect on the operations of existing carriers is an antiquated concept that, if endorsed by the Commission, would foster monopolistic protection of the traditional transportation industry and stand in the way of delivering new and innovative services to the riding public. It is also noteworthy that motor carrier applicants need not establish the inadequacy of existing transportation services. In 1982, the Commission expressly excised the inadequacy requirement from an applicant's burden of proof, thereby eliminating its focus on fostering monopolistic protection for existing carriers. *Morgan Drive Away, Inc. v. Pennsylvania Pub. Util. Comm'n*, 512 A.2d 1359, 1360 (1986) (citing *Seaboard Tank Lines, Inc. v. Pennsylvania Pub. Util. Comm'n*, 502 A.2d 762 (1985)).

B. Preliminary Objection No. 2: Lack of Standing

34. According to the protest, Protestant currently holds various operating authorities from the Commission, including approval to operate as a call or demand carrier between specified points in the Counties of Columbia, Montour and Northumberland. The protest further references a pending application to provide transportation network services between points in Pennsylvania, including the Counties of Columbia, Luzerne, Montour and Northumberland.

35. The protest should be dismissed on the basis of lack of standing, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(7). Since Protestant does not currently hold authority to provide transportation network services, it has no basis for challenging the application. Although it has an application pending to offer transportation network services, it is entirely speculative whether the application will be granted or if or when Protestant will develop the technology and business model that are necessary to offer these services.

36. Standing to participate in proceedings before an administrative agency is primarily with the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996).

Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

37. Moreover, in prior cases addressing a party's standing to protest an application for motor carrier authority, the Commission has repeatedly found that a party must have some operating authority in actual or potential conflict with the authority sought by the applicant to have the requisite standing to protest the application. In a long line of cases, the Commission has consistently concluded that having one classification of common carrier service does not give a carrier standing to protest a different classification of common carrier service. In the *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Initial Decision dated October 12, 1994 (became final by operation of law by Order entered on December 23, 1994), the Commission found that a protestant having call or demand authority lacked standing to protest an application for amendment of a certificate of public convenience seeking additional service area in which to render limousine service. The ALJ's ID contained the following discussion:

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. *See, Application of Glen Alsace Water Company*, 45 PA P.U.C. 472 (1971), standing denied to uncertificated protestant; *Re Francis M. Bauer*, 50 PA P.U.C. 825 (1977), late-filed protest allowed where protestant had an application for conflicting authority pending; *Re Capitol Bus Company*, 53 PA P.U.C. 590 (1979), call or demand authority conferred no standing to protest scheduled route service application; *Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking*, A-00107696, F.2 (entered February 21, 1989), operations under temporary authority with permanent authority application pending sufficient to confer standing upon a protestant; *Application of Team Brokerage, Inc.*, A-00105267 (entered March 6, 1985) and *Application of Interstate Express, Inc.*, A-00111077 (entered April 1, 1994), certificated common carriers lack standing to protest applications for brokerage authority; and *Application of Commercial Aggregates Transportation*

and Sales, L.P., A-0011085, F0003 (entered June 22, 1994), certificated common carrier lacked standing to continue to prosecute the protest after restrictive amendment eliminated all areas of operating authority between the protestant and the applicant.

I.D. 7-8. *See also Application of Kutztown Area Transport*, Docket No. A-2009-2140250 (Order entered October 18, 2010); *Application of K&F Medical Transport*, Docket No. A-2008-2020353 (Order entered July 8, 2008).

38. The Commission has already described transportation network services as being distinguishable from limousine and call or demand services so as to qualify for a separate classification of common carrier authority known as “experimental service.” *Application of Yellow Cab Company of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269, Order adopted on May 22, 2014.

39. Moreover, approving Rasier-PA’s applications to operate in Allegheny County and through Pennsylvania (except Philadelphia and the excluded counties for which authority is sought by this application), the Commission noted that “[t]he pervasive use of smart phones and the Internet in our society has revolutionized various sectors of our economy” and cited one such example as the creation of transportation network companies (“TNCs”). *December 5 Order at 10*. The Commission went on to describe TNCs as “altering the space traditionally occupied by taxicab” and note that the “difference is much more than reinventing dispatch methods.” *Id.* The Commission explained that “[t]he 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.” *Id.* On these grounds, the Commission found that it was appropriate to create a new type of motor carrier service under its experimental service regulations. 52 Pa. Code § 29.352.

40. Since Rasier-PA’s application proposes experimental service that is distinguishable from the service currently offered by the Protestant, the latter’s existing

passenger transportation authority does not confer standing upon which to oppose this application. Further, Protestant's pending application to provide transportation network services fails to support any direct, immediate and substantial interest in this proceeding since it is not known whether that application will be approved and if or when Protestant would develop the necessary technology and implement a business model to begin providing the services. Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. *Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board*, 467 A.2d 311 (Pa. 1983).

41. Therefore, the protest should be dismissed on the basis of lack of standing pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(7).

C. Preliminary Objection No. 3: Insufficient Specificity of Pleading

42. The protest should be dismissed pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(3) on the basis that it contains insufficient specificity due to its failure to include the information required by the Commission's regulations at 52 Pa. Code § 3.381(c)(1)(A).

43. Section 3.381(c)(1)(A) of the Commission's regulations requires written protests to contain the following information:

- (I) The applicant's name and the docket number of the application.
- (II) The name, business address and telephone number of the protestant.
- (III) The name, business address and telephone number of the protestant's attorney or other representative.
- (IV) A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

- (V) A list of all Commission docket numbers under which the protestant operates, accompanied by a copy of the any portion of the protestant's authority upon which its protest is predicated.
- (VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest.

52 Pa. Code § 3.381(c)(1)(A).

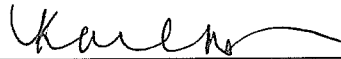
44. Although the protest alleges that the proposed service “will impair the operations of existing carriers including Protestant,” it does not offer any allegations to support any adverse impact that approval of the application would have on it, as required by the regulations. The protest further fails to include a concise statement of any amendment which would result in a withdrawal of the protest.

45. The absence of any specific information about adverse impact of the proposed service on the Protestant's operations and the lack of a concise statement of an amendment that would result in a withdrawal of the protest warrants dismissal of the protest on the basis of its insufficient specificity of pleading pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(3).

V. Conclusion

WHEREFORE, for the foregoing reasons, Rasier-PA LLC respectfully requests that the Commission grant these Preliminary Objections, dismiss the protest filed by Protestant and grant Rasier-PA such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Attorneys for Rasier-PA LLC

Dated: April 27, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a Wholly Owned :
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Northumberland and Union :

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 Email and First-Class Mail

Lloyd R. Persun, Esquire
Persun & Heim, P.C.
P.O. Box 659
Mechanicsburg, PA 17055-0659

Dated this 27th day of April, 2015.



Karen O. Moury, Esq.