

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC,	:	
a limited liability company of the State of	:	
Delaware, for the right to begin to transport,	:	
by motor vehicle, persons in the experimental	:	A-2014-2424608
service of shared-ride network for passenger	:	
trips between points in Pennsylvania, excluding	:	
those which originate or terminate in the Counties	:	
of Beaver, Clinton, Columbia, Crawford, Lawrence,	:	
Lycoming, Mercer, Northumberland and Union	:	

RECOMMENDED DECISION

Before
Mary D. Long
Jeffrey A. Watson
Administrative Law Judges

SYNOPSIS

Although transportation network company service generally is of great potential use to the public, this Applicant did not sustain its burden of demonstrating that it is also committed to protecting the public – both drivers and passengers. Therefore, we find that it is not in the public interest to grant the Applicant a certificate of public convenience.

PROCEDURAL BACKGROUND

Procedural History

On June 2, 2014, Rasier-PA LLC (Rasier or Applicant) filed with the Pennsylvania Public Utility Commission (Commission), its application 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 Pennsylvania, excluding those which originate or terminate in

the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union:

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.¹

Notice of the application was published in the *Pennsylvania Bulletin* on June 14, 2014. The notice provided that the deadline for the filing of protests was June 30, 2014.

The Protestants

On May 12, 2014, the Insurance Federation of Pennsylvania (Insurance Federation) filed a protest to the application, concerning the ability of Applicant to comply with the Commission’s insurance requirements. Applicant filed preliminary objections on June 2, 2014, seeking dismissal of the protest on the ground that Insurance Federation lacked standing to participate in this proceeding. By Initial Decision served on July 3, 2014, Applicant’s preliminary objections were sustained and the protest was dismissed for lack of standing. On July 23, 2014, the Insurance Federation filed exceptions to the Initial Decision dismissing the protest. On August 4, 2014, Applicant filed a reply to the exceptions. On August 15, 2014, the Commission entered an order granting the exceptions filed by the Insurance Federation and denying the preliminary objections filed by Rasier.

On June 20, 2014, MTR Transportation, Inc., t/d/b/a K-Cab Co. (MTR), filed a protest to the application. On July 17, 2014, Applicant and MTR filed a restrictive amendment and stipulation. Applicant agreed to restrictively amend its application so that the operating authority sought would be:

To transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger

¹ Application at ¶ 10-11.

trips between points in Pennsylvania, excluding trips which originate or terminate at points in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Montour, Northumberland and Union and in that portion of the County of Luzerne which is located within an airline distance of 15 statute miles of the limits of the Borough of Berwick, Columbia County.

MTR agreed to withdraw its protest, conditioned upon the acceptance by the Commission of the restrictive amendment and stipulation.

On June 30, 2014, protests were filed by IA Trans Inc.; Jaydan Inc.; LAN Trans Inc.; Sawink Inc., t/a County Cab; LMB Taxi Inc.; MAF; MG Trans Co., Inc.; Noble Cab, Inc.; Odessa Taxi Inc.; Rosemont Taxicab Co., Inc.; AF Taxi Inc.; Aceone Trans Co.; AG Taxi Inc.; AGB Trans, Inc.; Almar Taxi, Inc.; ATS Cab, Inc.; Bag Trans, Inc.; BNA Cab Co.; BNG Cab Co.; BNJ Cab Co.; Bond Taxi, Inc.; BSP Trans, Inc.; Double A Cab Co.; FAD Trans, Inc.; GA Cab Co., Inc.; GD Inc.; GN Trans, Inc.; God Bless America Trans, Inc.; Grace Trans, Inc.; MDS Cab, Inc.; S&S Taxi Cab, Inc.; TGIF Trans, Inc.; SABA Trans, Inc.; SAJ Trans, Inc.; SF Taxi, Inc.; Society Taxi, Inc.; Steele Taxi, Inc.; V&S Taxi, Inc.; VAL Trans. Inc.; VB Trans, Inc.; and VSM Trans, Inc. (collectively referred to as Medallion Carriers).² On July 18, 2014, preliminary objections were filed by the Applicant, seeking dismissal of the protests. Protestants did not file a response to the preliminary objections of the Applicant.³ The preliminary objections were denied by interim order dated August 11, 2014.

On June 30, 2014, protests were filed by United Cab LLC (United Cab), Good Cab LLC (Good Cab), EZ Taxi LLC (EZ Taxi), and Keystone Cab, Inc. (Keystone or Keystone Cab).⁴ On July 21, 2014, preliminary objections were filed by the Applicant, seeking dismissal of the protests. Protestants filed an answer to the preliminary objections of the Applicant on

2 Applicant referred to the enumerated Protestants as the “medallion carriers”.

3 The preliminary objections filed by Rasier objected to the protests filed by the enumerated carriers and identified them as “Medallion Carriers, et al.” Commission filings by Rosemont Taxi Cab Co. Inc., include its PUC operating authority under PUC Docket No. A-001310311 and A-2008-2053668 and PPA No. 1015925-05. Documents filed by Sawink, Inc., t/d/b/a County Cab Co. indicate Protestant Sawink has PUC approved call or demand authority at Certificate No. A-00122187.

4 Applicant referred to the enumerated Protestants as the “various call or demand carriers”.

July 31, 2014. On August 11, 2014, an interim order was issued denying the preliminary objections.

On June 30, 2014, a protest was filed by Executive Transportation Company, t/a Luxury Sedan (Executive). On July 21, 2014, preliminary objections were filed by the Applicant, seeking dismissal of the protest. An interim order denying the preliminary objections was issued on August 11, 2014.

On June 30, 2014, a protest was filed by Capital City Cab Service, Inc., (Capital City). On July 21, 2014, preliminary objections were filed by the Applicant, seeking dismissal of the protest. An interim order denying the preliminary objections was issued on August 11, 2014.

On June 30, 2014, a protest was filed by JB Taxi LLC t/a County Taxi Cab (JB Taxi). On July 21, 2014, preliminary objections were filed by the Applicant, seeking dismissal of the protest. On July 25, 2014, Applicant filed Amended Preliminary Objections to the protest of JB Taxi. On July 25, 2014, Applicant also filed a Motion for Partial Judgment on the Pleadings as to the protest of JB Taxi averring Protestant did not have standing to protest the application. On August 8, 2014, Protestant filed Protestant JB Taxi's Motion to Dismiss and Answer to Preliminary Objections and Motion for Judgment on the Pleadings. Protestant essentially averred that it has standing to challenge the proposed service and that the pending application of Protestant to expand its service to Washington County is sufficient to confer standing upon Protestant. On August 12, 2014, an interim order was issued denying the preliminary objections and motion for partial judgment on the pleadings.

On June 30, 2014, Jarnail Taxi, Inc. filed a protest in this proceeding.

Other Commission Proceedings

The Commission has also rendered orders in other proceedings which are related to the Applicant. On July 2, 2014, in addition to the application before us now, the Applicant also filed an application for Emergency Temporary Authority to operate in Allegheny County.⁵

By Order entered July 24, 2014, the Commission approved the application. However, the approval was contingent upon the Applicant meeting specific insurance and tariff requirements on or before August 24, 2014.

Prehearing and Hearing Proceedings

On July 3, 2014, a Call-In Telephone Notice was issued, scheduling a prehearing conference for Thursday, July 24, 2014.

On July 24, 2014, a prehearing conference was held. The purpose of the conference was to schedule evidentiary proceedings in this matter, along with a related application that was filed by the Applicant for authority to operate in Allegheny County, Pennsylvania. Karen O. Moury, Esquire appeared on behalf of Applicant. Lloyd R. Persun, Esquire, appeared on behalf of MTR. Michael S. Henry, Esquire appeared on behalf of the Medallion Carriers: Jarnail Taxi; B.M. Enterprises, t/a A.G. Taxi; Bucks County Services, Inc.; Dee Dee Cab Co.; Germantown Cab Co.; Ronald Cab, Inc., t/a Community Cab; Shawn Cab Inc., t/a Delaware County Cab, and Executive Transportation Company, t/a Luxury Sedan. Justine Pate, Esquire appeared on behalf of United Cab, Good Cab, EZ Taxi and Keystone Cab. David W. Donley, Esquire appeared on behalf of JB Taxi. Joseph T. Sucec, Esquire entered his appearance on behalf of Capital City, however he did not participate in the prehearing conference. A litigation schedule was established at the prehearing conference and a prehearing order was entered on July 29, 2014. After consultation with counsel, evidentiary hearings were scheduled for August 18-19, 2014, in Pittsburgh.

On July 25, 2014, a Hearing Notice was issued to the parties, scheduling a hearing for August 18-19, 2014, beginning at 9:00 a.m.

The hearing was convened as scheduled on August 18, 2014.⁶ The Applicant was represented by Karen O. Moury, Esquire, who presented the testimony of six witnesses. Ms. Moury offered seven exhibits which were admitted into the record. The Insurance

⁶ The hearing was a joint proceeding for both this application and the Applicant's Allegheny County application filed at Docket No. A-2014-2416127.

Federation was represented by Samuel R. Marshall, Esquire, who presented the testimony of one witness. Michael S. Henry, Esquire appeared on behalf of the Medallion Carriers: Jarnail Taxi; B.M. Enterprises, t/a A.G. Taxi; Bucks County Services, Inc.; Dee Dee Cab Co.; Germantown Cab Co.; Ronald Cab, Inc., t/a Community Cab; Shawn Cab Inc., t/a Delaware County Cab, and Executive Transportation Company, t/a Luxury Sedan. Mr. Henry presented the testimony of three witnesses. Justine Pate, Esquire appeared on behalf of United Cab, Good Cab, EZ Taxi and Keystone Cab. David W. Donley, Esquire appeared on behalf of JB Taxi. Mr. Donley presented no witness testimony but did offer one exhibit which was admitted into the record. Joseph T. Sucec, Esquire entered his appearance on behalf of Capital City. Mr. Sucec presented no witness testimony.

The hearing resulted in a transcript containing 735 pages. Each party filed a brief and the record was closed by order dated September 18, 2014.

FINDINGS OF FACT

Description of Uber and Subsidiaries

1. The Applicant is Rasier-PA LLC (Applicant), a limited liability company, registered in the State of Delaware. Tr. 53.
2. The Applicant is a wholly-owned subsidiary of Uber Technologies, Inc. (Uber). Tr. 53, 60.
3. The Applicant, Rasier-PA LLC, is not operating in Allegheny County or state-wide in Pennsylvania and has not provided any service in this area. Tr. 80-81, 261.
4. The only member of Rasier-PA LLC is Travis Kalanick. Tr. 53.
5. Rasier LLC, a separate wholly-owned subsidiary of Uber Technologies, Inc., is operating in Allegheny and other parts of Pennsylvania and has provided services in this area since approximately January of 2014. Tr. 81, 84, 261.

6. Rasier LLC does not have authority to operate from the Commission.
Tr. 82.⁷
7. Applicant has no employees. Tr. 296.
8. Uber Technologies, Inc. owns and created the application and technology that is licensed to Applicant. The Applicant intends to provide it to the operators who must enter into an agreement with the Uber subsidiary to perform services as an independent contractor.
Tr. 57, 85, 100, 111-112.
9. Matthew Gore, the General Manager of Uber Florida, with a business address in Washington, D.C., is employed by Uber Technologies, Inc. Tr. 49, 192, 260.
10. While living in Washington D.C., Mr. Gore was the associate general manager of Uber Pittsburgh, from March 19, 2014 until August of 2014, with a primary responsibility to develop and grow the business, including establishing and maintaining independent contractors who provided rides as operators for Applicant on the platform. Tr. 5051, 193, 196.
11. Mr. Gore confirmed there were formal written agreements with Uber Technologies Inc., Applicant, Rasier-PA LLC and Rasier LLC for the licensure of the app and for the operation of the services, however he was not familiar with them. Tr. 197-198. Mr. Gore was in charge of regulatory compliance in Pittsburgh however he is not familiar with Pennsylvania law. Tr. 217-218.
12. The Applicant does not have independent contractor agreements with operators but intends to enter into such agreements. Tr. 303-304.

⁷ The Commission granted emergency temporary authority to Rasier-PA LLC, not Rasier LLC. Docket No. A-2014-2429993 (Order entered July 24, 2014).

13. Rasier LLC has independent contractor agreements with its operators. Tr. 304.

14. The independent contractor agreement used by Rasier LLC and proposed by Applicant requires the operator to have personal insurance coverage for private passenger vehicles. The operator would not be required to obtain a certificate of insurance or other coverage to protect a passenger in the vehicle. Tr. 305-306.

15. The independent contractor operators can drive for Uber or any of its subsidiaries. Tr. 309-310.

Description of Application and Service

16. The service proposed in the application contemplates the use of Uber Technologies' digital platform, in order to facilitate transportation for compensation, through the use of non-certificated drivers, in their personal vehicles. Tr. 87, 262-263.

17. The digital platform is known as the "Uber app", regardless of which subsidiary is using it. Tr. 87, 262-263.

18. Operators are given a smart phone that alerts the operator that a ride has been requested and gives the operator an opportunity to accept the request. Tr. 56-57.

19. The proposed service by Applicant is a method in which people may be connected to operators willing to provide them with a ride through an internet website or downloading a mobile application to a smartphone or tablet. The customer creates a user account, supplies a valid credit card and requests a ride, through the internet or smartphone application. Tr. 55-57.

20. The operators who drive the vehicles receive a fare from the rider, and then pay a commission of 20 percent to Uber. All of the revenues that Uber generates are through the commissions on a per ride basis. Tr. 200.

21. An individual without a credit card, bank account, Pay Pal account or Google wallet cannot use the Uber app. Riders may not pay for a trip by using cash. An individual without a smart phone or internet access cannot use the Uber app. Tr. 482-483, 490.
22. Applicant does not have the ability to modify the software. Tr. 85-86.
23. In order for a potential customer to use the app, the customer must enter into a licensing agreement with Uber Technologies, Inc. Tr. 198-199.
24. Riders will be subject to the terms of the licensing agreement between Uber Technologies, Inc., and Rasier-PA LLC by operation of the “terms and conditions”. Tr. 86; JB Taxi Exhibit A.
25. The licensing agreement contains disclaimers or limitations of liability, limiting the liability of Uber. Tr. 91-92.
26. Prospective passengers are required to accept certain terms and conditions established by Uber, in order to create a user account, which provides, in part, that Uber is not providing transportation services. Tr. 122.
27. Uber disclaims any responsibility or liability for any of the services provided to the driver or the rider. Tr. 122-123.
28. The Applicant has no employees and its operators would provide service as independent contractors. Tr. 56, 91-92.
29. Operators are free to solicit or accept street-hails or to do whatever they want when not on the Uber platform. Tr. 152.
30. Uber uses certificated carriers, in certain jurisdictions, however, the product being proposed by Applicant does not use certificated carriers. Tr. 247.

31. Uber maintains an office in Pittsburgh. Sometimes, there are temporary employees based in Pittsburgh, however, they are not Uber employees, they are employed through a third party contracting company. Tr. 102-103.

32. Compliance with Commission regulations would be performed by Uber employees for the Applicant. Tr. 118.

33. When a customer requests the ride, the customer would be paired with the nearest operator who has signaled themselves available to provide service. If the operator accepts the request, the operator is directed to the user's location and will provide a ride as directed to a drop off point. Upon conclusion of the ride, the customer exits the vehicle and his or her credit card on file will be charged. Tr. 56.

34. Once the ride has been accepted by the operator, the rider will be notified the ride is accepted, will see the location of the operator on a map, and will see a photograph of the operator, the license plate of the vehicle, the type of vehicle, and the estimated time of arrival. Tr. 58.

35. Every ride procured through the Uber app is a demand ride. Tr. 216.

Vehicles and Drivers

36. Applicant proposes that the operators would be independent contractors who use their own personal vehicles to provide the service. The Applicant does not own the vehicles or employ the drivers. Tr. 56-58.

37. The vehicles to be used will not be owned or leased to Applicant and Applicant will not lease the vehicles from the drivers. Tr. 209-210.

38. The vehicles to be used by the drivers will be owned by the drivers, parents or spouses of the drivers. Sometimes the drivers providing the transportation will not own or register the vehicle being used. Tr. 210.

39. Uber proposes to use a third party to perform background checks for the drivers using its apps. Tr. 232.

40. Operators cannot have any convictions for driving on a suspended license or have their license revoked for the past three years. Tr. 233.

41. Operators must be at least 21 years of age, licensed to operate a motor vehicle in the United States, and meet all background check requirements. Operators younger than 23 years of age must have three years of operating experience and operators older than 23 must have at least one year of operating experience. Tr. 63, 306.

42. Applicant will require operators to provide proof of vehicle registration and proof of personal motor vehicle insurance. Tr. 63.

43. Vehicles used by the drivers cannot be more than ten years old. Tr. 63.

44. Neither Applicant nor Uber nor its subsidiaries inspects the vehicles, but instead relies on the inspection system performed by the Commonwealth of Pennsylvania and feedback from users regarding comfort issues. Tr. 105-107, 210.

45. Applicant does not propose to conduct any physical inspection of any of the vehicles that are going to provide the service. Tr. 211-212.

46. Applicant cannot stop a customer from using the driver for other transportation without using the Uber app and there is no mechanism in place to prevent a driver from taking street hails while using the app. Tr. 213-215.

47. Neither Uber, its subsidiaries nor Applicant has a mechanic on staff, does not perform safety checks on any vehicle used as part of Applicant's plan. Tr. 107.

48. Operators are permitted to use all passenger vehicles and light duty trucks which have four doors and enough seatbelts to transport at least four passengers. Tr. 64.

49. Applicant will require all operators to undergo background checks, which include a statewide, county-level search anywhere the operator has lived in the prior seven years, as well as a federal criminal record check and a check of the federal sex offender registry. Tr. 60.

50. Operators would be disqualified from operating vehicles for the Applicant in the event of any conviction of a violent offense, felony theft, felony fraud, any sexual offense, a hit and run or attempting to evade police conviction, and various smaller offenses in the prior seven years. Tr. 60-62.

51. Operators would also be disqualified for a conviction related to using a vehicle to commit a crime, to evade police, any DUI or operating a vehicle under the influence of alcohol or drugs, or reckless driving within the prior three years. Tr. 61.

52. Operators would be disqualified for having a suspended or revoked license or driving on a suspended or revoked license in the previous three years. Tr. 62.

53. In the event a rider reasonably suspects an operator of being under the influence of alcohol or drugs, Applicant has a policy of immediately suspending the operator during the duration of its investigation. If the suspicion is confirmed, the operator is permanently removed as a driver. Tr. 62.

54. Applicant does not perform drug testing and does not require operators to submit to any type of drug testing. Tr. 307.

55. The agreement between Uber and passengers or users provides that any of the rights or obligations under the agreement may be assigned to a parent or a subsidiary. Tr. 124; Protestant Ex. A.

56. The agreement further provides that the quality of the transportation services scheduled through the use of the service or application is entirely the responsibility of the third party provider. Tr. 126-127.

57. Users acknowledge that they understand that “by using the application and the service, you may be exposed to transportation that is potentially dangerous, offensive, harmful to minors, unsafe or otherwise objectionable, and that you use the application and the service at your own risk.” Tr. 126-127; Protestant Ex. A.

58. The agreement also provides that disputes would be submitted to arbitration in the state of California. Tr. 129.

59. The user-agreement further provides that the user will be bound by future amendments or additions to the agreement. Tr. 135; Protestant Ex. A. ___

Financial Information

60. Applicant submitted financial information in support of its application. Tr. 59; Applicant Ex. 2.

61. The Statement of Financial Position provided by Applicant proposes a \$1.3 million loss for the twelve month period ending July 2015. Mr. Gore did not know the source of the numbers provided by the statement or how they were calculated. Tr. 142; Applicant Ex. No. 2.

Tariff

62. Applicant filed a tariff with the Commission on August 7, 2014, whereby Applicant offered service through a platform that connects operators and riders. The tariff provides operators may not solicit or accept street hails and the credit card on file will be charged after the service has been provided. Upon completion of the service, the rider will be issued a receipt that indicates the charge and documents details of the trip. Tr. 78-80; Applicant Ex. 3.

63. According to the tariff, the applicable rates will be shown to the rider prior to taking the trip and the rate may be calculated in terms of time and distance, and includes a

base fare. The fare may include a flat rate from certain points to other points, and the rates may increase or decrease as necessary to match supply and demand. Tr. 79-80.

64. The tariff filed by Applicant has no information upon which anyone can make an evaluation as to whether or not the rates are just and reasonable. Tr. 290.

65. The tariff provides that Applicant may change the rate applicable to mileage and to time at any point it deems necessary, without going back and changing the tariff that is on file with the Commission. Tr. 290-291.

66. Applicant uses “surge pricing”, whereby it increases prices at times of extreme demand. Tr. 146.

67. The higher rate, during periods of high demand, can be as much as 300 percent of the regular rate that is charged when there is normal demand. Tr. 220.

68. Applicant utilizes a minimum fare, but did not include it in its tariff. Tr. 148-149.

69. Applicant utilizes a base fare, including base mileage and time, but decided “for business reasons” not to include it in its tariff. Tr. 302.

70. Applicant may assess upon a rider a cancellation fee as well as a vehicle cleaning fee. Failure to pay the fee may result in the user’s account being deactivated. Tr. 149151, 242.

71. Flat fees may be charged for trips to specific destinations. Tr. 237.

72. A prospective customer who requests a ride is not prospectively advised as to the cost of the ride. Tr. 241.

73. Fares cannot be calculated by solely using the information contained in the proposed Applicant tariff. The tariff, as written, permits Applicant to charge anything so long as the fare is somehow calculated by distance and time and includes a base fare, or is calculated on the basis of a flat rate. Tr. 485-486, 488-489.

Need

74. Matthew Gore conducted case studies and background research regarding the need of the service and moving into certain areas, in Pittsburgh and Allegheny County, but did not perform any such studies regarding need in Dauphin, Lancaster, Adams, Schuylkill, Erie, or York Counties. Tr. 260-261.

75. “Uber X” is a low cost service and is the only service available in Allegheny County and the proposed service area. Other services are available in other areas, such as Uber Black, a higher end luxury option. Tr. 71, 74.

76. It is possible, at times when a request for a ride is made, there would be no operators available. Tr. 230-231.

77. Sally J. Guzik, who lives and works in the city of Pittsburgh, has used the Uber app to request ride sharing services, beginning in the middle of February 2014. She has never waited more than 15 minutes, when using the ride share application, and would use ride sharing services if available outside of Allegheny County. Tr. 35-36.

78. Ms. Guzik does not have any understanding as to the difference between Uber and Applicant. Tr. 37.

79. Ms. Guzik has used the service approximately two times a week from February 14, 2014 through June 2, 2014, but has not used the service outside of Allegheny County. Tr. 35-36, 38-40.

80. Rebecca Gonzalez Bartoli has used the Uber app to request ride sharing on two occasions in July in Orange County, California. She also used the app on Sunday, August 17, 2014 to be transported from the airport to her hotel in Pittsburgh. She visits Philadelphia multiple times a year and would use the Uber app. She has used the Uber app three times since July, one time in Allegheny County and two times in Orange County, California. Tr. 42, 45, 47.

81. Brian Bashin, a blind individual and chief executive officer for Lighthouse for the Blind in San Francisco, California has used Uber's ride sharing services over the last couple of years. He had obtained Uber X services in a matter of minutes. Tr. 160-162.

82. Uber does not permit a blind person to use a guide dog while using its service. Tr. 172-173.

83. Mr. Bashin has never tried to use a taxi service in Allegheny County or in Pennsylvania. Tr. 176.

84. Lori Sargent, a resident of Coplay, Lehigh County, Pennsylvania, has never used the Uber app but would use a ride sharing service if one was available to her. Tr. 178-180.

85. Lori Sargent has never had experience with passenger services in Washington or Allegheny Counties, and has never used taxi service in Lehigh, Dauphin, Cumberland, Perry, Adams, Lebanon, Lancaster or York Counties. Tr. 178-183.

86. Joshua Freedman, the CEO of Cabbygo, a software developer from Pittsburgh, Pennsylvania provides free technology tools to licensed carriers in Pennsylvania. His platform is an online app, a mobile application and web platform where carriers can log in, create accounts for their drivers, and then the drivers can use their mobile platform to receive ride requests. Tr. 185.

87. Any licensed carrier can utilize the Cabbygo app and any rider who has a mobile platform can download the app, and request a ride. Multiple carriers can bid on a requested ride and their bid price is based upon their PUC approved rates, so that a rider can choose between an economical option, the highest rated company or the closest carrier. Tr. 186.

88. The Cabbygo app service was launched on December 31, 2013 in Pittsburgh and July 15, 2014 in Harrisburg. The service does not actually transport passengers. Tr. 187-188, 191.

89. Khalid Alvi is a taxi cab driver for All Taxicab Company and the executive director of the Philadelphia Taxi Cab Association, a non-profit organization that educates drivers. Mr. Alvi leases a medallion and owns his own cab, which is registered as a commercial vehicle by the Commonwealth of Pennsylvania. Tr. 343-345, 401.

90. Mr. Alvi's company, All-City Cab Company, maintains a garage with a certified mechanic who repairs and maintains the vehicles. Tr. 350-351.

91. A customer may obtain a cab in Philadelphia by calling the company and utilizing the GPS system or by downloading the mobile telephone application which is called "215 Get a Cab" in order to make advanced reservations to schedule a cab or to use the on-demand service. Tr. 367-368. The automated dispatch system has been installed in taxicabs in Philadelphia since 2005. The cabs are also equipped with a panic button, which can send a signal to dispatch the Philadelphia Parking Authority (PPA) and first responders. Tr. 427-429.

92. Medallion taxicabs have been connecting customers with taxi drivers by using a digital transmission system since 2005. Riders can go online and request a taxicab through a computer, the signal was then sent through a satellite to dispatch, and the closest vehicle found to the rider would be identified. Tr. 430-431.

93. The phone application 215 Get a Cab is a smartphone application used by All Cab Company, the largest taxicab company in Philadelphia, that holds 50% of the Philadelphia taxicab medallions that can provide service on demand, can permit a rider to order cabs in advance, order a cab equipped with a wheelchair, or select a wheelchair accessible vehicle. Tr. 430-431, 461, 463.

94. The medallion phone apps also only connect passengers to certified carriers, through the same digital dispatch system that was installed in 2005. Medallion carriers typically deliver a taxicab to a passenger within three to four minutes in downtown Philadelphia. Tr. 433-434.

95. Clean up fees are not charged by Medallion Carriers. Tr. 384-385.

96. Mr. Alvi applied to become an operator for Uber X in Bucks, Delaware and Montgomery Counties. He learned he could use his private car and private insurance and would not have to pay the six hundred dollar monthly lease and radio fee. Tr. 387-388.

97. Mr. Alvi met with an Uber representative at an office in New Jersey and the representative looked at his 2005 Crown Victoria, with inoperable windows, and was approved to start driving for Uber X upon paying the \$300 for the smart phone deposit. Tr. 387-389.

98. Alex Friedman, a medallion owner in Philadelphia and manager of All City Taxi, managing over 100 taxicabs, has a body shop and mechanical shop that regularly performs routine maintenance on the taxicabs, including body work, changing brakes and tires, and changing oil. Tr. 420-421.

99. Typically, a two-shift operation puts approximately 50,000 miles on a vehicle annually. Tr. 421. PPA requires inspection of vehicles twice a year. Tr. 457-458. Cabs older than eight years may not be operated under the authority of the PPA, however the typical age of the vehicles is no more than four years. Tr. 459.

100. A ride was provided by an operator contracting with Rasier LLC, arranged using the Uber app, from the Pittsburgh International Airport on the hearing date on August 18, 2014. Tr. 224.

Insurance

101. Henry Fuldner is the Director of Insurance and Risk Management at Uber, responsible for the purchase of insurance for the benefit of the company, insurance maintained on behalf of drivers, and insurance programs arranged by Uber through third parties. Tr. 511.

102. Applicant's commercial auto insurance carrier is James River Insurance Company, a property and casualty insurer, domiciled in Ohio, an eligible surplus lines carrier in Pennsylvania. Tr. 513.

103. Applicant proposes to provide coverage during stage one, the period of time when the app is turned on, but no ride has been requested, liability coverage of \$15,000 per bodily injury claim to a single person; \$30,000 of bodily injury to all injured parties in the aggregate; and \$5,000 for property damage liability. Tr. 515.

104. During stages two and three, while the driver is conducting the actual commercial operations and earning money, Applicant proposes to provide coverage of \$1 million of third party liability insurance at a combined single limit for property damage and bodily injury, and \$1 million of uninsured and underinsured motorist bodily injury coverage. Tr. 515.

105. The coverages as proposed by Applicant could be provided by any combination of insurance maintained by the driver or Uber, however, coverage maintained by the driver must specifically recognize the driver's use of the vehicle in connection with the Uber platform in order for driver's coverage to be valid in some circumstances. Tr. 515-516.

106. Applicant is not proposing and does not intend or recommend to require operators to notify their insurers that they are driving while utilizing the Uber app. Tr. 516, 535, 598.

107. Applicant believes such a requirement would be unduly burdensome. Tr. 517.

108. Applicant advises proposed drivers that their personal auto policy may not provide coverage and that it is up to the driver to determine what coverage they do or do not have in their personal automobile policy. Tr. 536.

109. Concerns exist regarding gaps in insurance coverage when a driver's personal insurance lapses and the driver is involved in an accident while providing services for Applicant, or when the driver's insurance is not otherwise in effect. Tr. 517-518.

110. From the time the Uber app was launched in Allegheny County in February of 2014, more than one but fewer than 10 accident claims have been received regarding accidents involving Applicant and Applicant is not aware of the denial of any of these claims.⁸ Tr. 524-525, 528.

111. Applicant frequently describes its proposed drivers as fulltime students, retirees or people looking for part-time work. Tr. 543.

112. Applicant will not give its proposed drivers a copy of the commercial insurance policy, but in most cities, the driver may go to an office and review a copy of the policy if they request to do so. Tr. 549.

113. Applicant instructs drivers, in the event of an accident, to provide a copy of the insurance certificate to anyone who requests it, and to contact their local Uber office to report the accident and fill out an incident report that Uber sends to James River. Tr. 552.

114. During stages two and three, in the event of an accident, drivers are instructed to provide the insurance information provided by Applicant, as opposed to the driver's personal coverage. Tr. 589.

115. The coverage proposed by Applicant during stage one would be primary, however the driver's coverage would need to specifically recognize the driver's use of the vehicle in connection with the transportation network company. The proposed stage one coverage is substantially different than the coverage provided under the ETA order. Tr. 557-558, 581.

⁸ Matthew Gore, who served as the associate general manager of Uber Pittsburgh, testified that Rasier-PA LLC is not operating in Allegheny County or state-wide in Pennsylvania and has not provided any service in this area. Tr. 80-81, 261.

116. Unless there is a livery exclusion or a specific endorsement, Applicant's policy during stage one would provide primary coverage. Tr. 561.

117. During stage one, if a driver would obtain primary coverage for the commercial activities, then the driver's coverage would be primary and Applicant's policy would become secondary. Tr. 673.

118. The policy proposed by Applicant does not provide 24/7 coverage but is conditioned upon the driver's use of the application. Tr. 601.

119. The drivers that will contract with Applicant will not be identified to the Applicant's insurance company. Tr. 616.

120. The vehicles used during the service provided by Applicant will not be identified to the Applicant's insurance carrier and individual vehicles are not listed on the policy. Tr. 617, 645.

121. The proposed insurance coverage begins when the driver turns on the Uber app and logs in, making the driver available to receive a request for transportation. Coverage continues for as long as the driver is logged in and also continues in the event the driver receives a request for transportation. Stage two then begins when the request for a ride is accepted, and coverage continues until the completion of the transportation service. Tr. 639.

122. If a driver had a policy with a livery exclusion, that would raise a concern to Applicant. Tr. 677-678.

123. Coverage in stage one is determined by whether the app is on or not. Coverage in stages two and three is determined by the scope of the transportation service. Tr. 680.

124. Jonathan Greer, Vice President of the Insurance Federation of Pennsylvania, a state trade association that represents commercial and personal insurers, works with coverage, underwriting, rating and claim dispute issues. Tr. 684-685.

125. The notice and disclosures that Applicant provides to drivers is important, as insurance consumers are best served when they are well informed, and an insurance consumer is best informed by their insurer. The insurer who knows the insured and the policy can best tell the driver what risk the driver is assuming and what problems the driver is potentially inviting by engaging in transportation network company activity. Tr. 686.

126. The Pennsylvania Insurance Department issued an alert in June of 2014, specifically addressing the concerns of personal exposure to liability due to the livery exclusion and of the potential of being terminated by the driver's personal auto insurer for engaging in this activity. Tr. 688-689.

127. This concern is based upon the added risk exposure associated with a commercial activity which is a risk that was not contemplated when the personal auto policy was written. It is a different risk than was originally contemplated and could result in termination of the policy or an increase in risk that would result in an increase in insurance premiums. Tr. 689-690.

128. The training and education provided by Applicant to drivers relating to claims processing is deficient. Tr. 690-691.

129. A personal automobile insurer would want to be informed if its insured has become a driver with Applicant, as it is a different risk than what was originally underwritten and rated. It is something that was not contemplated when the policy was issued. Therefore, it changes the nature of the risk that the driver presents. Tr. 691.

130. The concern is heightened as the drivers with which Applicant intends to work may not be professionals or in the business of being a commercial or taxicab driver. Tr. 691-692.

131. Drivers are not provided with sufficient information or training to understand what they are entering into, when contracting with Applicant. Tr. 692-693.

132. Another significant concern is the personal liability exposure and the financial exposure of drivers. Tr. 693.

133. With the limits of coverage and the exclusion in place, situations will arise where someone becomes personally liable for damages because the damages exceed the policy limits. Tr. 693.

134. The controlling document, when evaluating coverage, is the policy, however, one cannot truly evaluate the insurance that the Applicant proposes without seeing the actual policy language itself. The actual policy language was not provided by Applicant. Tr. 694.

135. The public, drivers and pedestrians as well as drivers in other cars should know that the insurance covering the driver's car is valid. Tr. 695.

136. The Pennsylvania Insurance Department has recommended that drivers be required to notify their personal carrier in order to participate in ride sharing and other such use of their vehicles. Tr. 697.

137. Gene Brodsky is employed by G.T. Group, providing claim services for various clients, claims management and risk management for taxicabs, insurance issues and is currently handling the liquidation of Ocean Risk Retention Group. Tr. 701-704.

138. It is important when dealing with motor carrier transportation services that a stable insurance market exists. Tr. 704.

139. Risk retention groups do not benefit from the Pennsylvania Insurance Guarantee Association. Tr. 706.

140. A Form E is a certificate that the insurance carrier must file with the regulatory agency to provide that coverage exists for the insured vehicles. Tr. 707-708.

141. Insurers for motor carriers take a much higher risk than regular commercial auto insurance carriers, as they present a very different service, risk and liability exposure than that provided by personal use of vehicles. Tr. 709.

142. It is important to identify the year, make, model, and vehicle identification number of the vehicles being insured to the insurance company. This is necessary in order for the insurer to properly classify the right risk that it is being covered. Tr. 715.

143. For every vehicle that is submitted to the insurance company for coverage, the carrier should be provided with the year, make, model number, vehicle identification number and identification of the dispatching service. These are facts that are important for underwriting purposes because these details for each vehicle can change the exposure of the insurer. Tr. 716.

144. A concern exists that the Applicant is proposing to provide insurance coverage where the vehicle information is not provided and the vehicles are not identified under the policies. It is difficult to quantify the risk if the carrier is not aware of this information and how many vehicles are being operated. Tr. 717.

145. It is also important to quantify the risk in terms of the overall health of the industry. Only when the insurer knows the proper number of vehicles can it calculate how much premium must be charged for the industry. Tr. 717.

146. A concern exists regarding the classes of coverage proposed by Applicant. If the driver does not turn on the application, he is not covered by the insurance. This is a concern because the drivers may turn on the application in a busy place where they know they are likely to pick up a job, complete the ride and then the driver may come back to the original point where the rider was picked up, where the driver would have a higher chance of picking up another passenger. A personal insurance carrier dealing with a driver who just dropped somebody off and drives back to a busy area or sporting event, incurs a greater risk than that presented by a personal use of a vehicle insured under a personal motor vehicle policy. Tr. 719720.

147. If an adjustor in a personal line carrier learns that an insured was driving back and forth to a busy area during rush hour even though he doesn't work there, it could be considered a business operation, and the insurance coverage could be invalid. Tr. 723.

148. Commercial use of a vehicle to return to a location to maximize business revenues should utilize coverage whether the app is on or not. Tr. 723.

149. It is not common for an insurance carrier to provide risk coverage that only provides partial coverage for part of the operation but not the complete operation. Tr. 722.

150. In terms of the taxicab market, there are no carriers that would write a policy for a carrier only during the period when it is being used for its commercial use. Tr. 722.

151. If an insurer does not know how many vehicles it is insuring, it cannot know the extent of its exposure as an insurance company. Accordingly, a standard insurance company insuring a risk that it does not properly assess or understand would have difficulty charging the correct rates. The losses could be incurred by policyholders that have supplied the proper information. Tr. 728.

152. The thoroughness and proper evaluation of risk in the underwriting and application process benefits the public as well as the insurance company. Tr. 729-730.

DISCUSSION

The grant of a certificate of public convenience is governed by Section 1103 of the Public Utility Code:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.⁹

9 66 Pa.C.S. § 1103 (a).

The courts have held that the standards for determining when a certificate is necessary or proper for the service, accommodation, convenience or safety of the public is within the sound discretion of the Commission.¹⁰

The Protestants¹¹ contend that the Applicant as a “transportation network company” cannot be considered a motor carrier and is therefore not eligible to receive a certificate of public convenience. We disagree.

Section 102 defines a transportation public utility as “Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . . transporting passengers or property as a common carrier.”¹² 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” 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”

Protestants contend that the Applicant does not own the vehicles used to provide transportation service and that the Applicant itself takes the position that it is not providing transportation service. However, the statute clearly does not require the operator to own vehicles in order to be a motor carrier. Nor are the Applicant’s statements that it is not providing transportation service persuasive. Viewing the proposed service as a whole, the Applicant is proposing to offer transportation to passengers for compensation and the Commission has the jurisdiction to grant a certificate of public convenience to a transportation network company.

10 *E.g., Elite Industries, Inc. v. Pa. Pub. Util. Comm’n*, 832 A.2d 428 (Pa. 2003).

11 There are numerous Protestants to this application. To their credit, they have made an effort to collaborate the presentation of evidence and argument in this matter. Although they have raised unique arguments in their opposition to the application, no Protestant derives an individual benefit from taking or not taking a certain position. Therefore, unless it is relevant to a particular argument, we will not attribute any particular issue to an individual Protestant.

12 66 Pa.C.S. § 102 “Public Utility” (1)(iii).

Protestants further argue that the service proposed by the Applicant is acting as a broker and not a motor carrier. A “broker” is defined as:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or in the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa.C.S. § 2501(b).

Protestants aver that pursuant to 66 Pa.C.S. § 2505(a), brokers of transportation in the Commonwealth of Pennsylvania must obtain a brokerage license issued by the Commission prior to engaging in the business of being a broker, and that Applicant does not hold a brokerage license issued by the Commission.

Commission regulations 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.¹³ Each of those 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 was recognized when the regulations were promulgated. Therefore, in order to accommodate a proposed transportation methodology not encompassed within the stated categories, the Commission regulations also provide for “experimental service.” The Commission’s regulations governing experimental service provide:

In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new

13 52 Pa.Code §§ 29.301-29.356.

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 two 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.¹⁴

We conclude that it is appropriate to consider the transportation service proposed by the Applicant under the Commission's experimental service regulation as a motor carrier. This approach better serves the public interest because it ultimately requires the Applicant to take responsibility for ensuring the public safety issues that we discuss in more detail below. The Public Utility Code precludes a broker from utilizing motor carriers who are not certificated by the Commission. The Applicant is clearly not utilizing certificated motor carriers to provide transportation. Rather, it is proposing the use of private individuals in their personal vehicles. The Commission cannot waive the requirement of the statute imposed by the General Assembly. Therefore, it is more appropriate to consider the Applicant a motor carrier and apply the Commission's regulations accordingly. In the event that the General Assembly creates a different classification of transportation service than those provided for in the Public Utility Code, the status of the Applicant can be reviewed in the future.¹⁵

The Commission's first opportunity to consider a transportation network company (TNC) service was *Application of Yellow Cab Company of Pittsburgh, Inc. t/a Yellow X*.¹⁶ That application was proposed by an existing taxicab company. At that time, the Commission viewed the focus of the innovation to be the use of a software platform to connect passengers with drivers.¹⁷ Based on the testimony offered by the Protestants in this proceeding, it has become

14 52 Pa.Code § 29.352.

15 52 Pa.Code § 29.352.

16 Docket A-2014-2410269 (Order entered May 22, 2014).

17 Slip op. at 3.

clear that the innovation is not the use of software to arrange transportation. Indeed, several existing motor carriers have software in use which can be downloaded onto a smartphone and used by a consumer to secure transportation.¹⁸

In truth, the innovation is the use of so-called non-professional drivers in their private vehicles to provide transportation service. This feature of a TNC enables a company, such as the Applicant, to respond quickly to increased demands for transportation service without the overhead required by existing carriers to expand their fleets. For example, it is a significant expense to increase the number of vehicles offered by a call and demand carrier in order to have enough vehicles to provide transportation during peak times, only to have those vehicles sit idle during non-peak hours.¹⁹ It is this feature of the proposed service which is a focus of our inquiry here – has the Applicant demonstrated that its proposed transportation service, which utilizes non-professional drivers in their private vehicles, can be provided in a safe manner.

As we explained above, we consider the application in accordance with the “experimental service” regulation at Section 29.352 of the Commission’s Regulations.²⁰ That section 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 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.²¹

18 N.T. 15-17.

19 *E.g.*, N.T. 350-351, 387-389, 420-421, 459.

20 52 Pa.Code § 29.352.

21 *E.g.*, *Yellow X*, slip op. at 9-10 (waiving leasing regulations and imposing reporting requirement).

Having concluded that it is appropriate to consider a TNC as a motor carrier offering experimental service, we consider whether this carrier should be authorized to operate in the Commonwealth. As explained more fully below, we find that the Applicant put very little evidence in the record which demonstrates its ability to meet the Commission's criteria. Although TNC service generally is of great potential use to the public, this Applicant did not sustain its burden of demonstrating that it is also committed to protecting the public – both drivers and passengers. Therefore, we find that it is not in the public interest to grant the Applicant a certificate of public convenience.

The Commission need not follow a rigid set of rules in determining whether to issue a certificate of public convenience. The gravamen of the inquiry is whether the record contains evidence of a public benefit to be obtained from the service.²² This is particularly true where, as here, we are considering an experimental transportation service such as the proposed transportation network company.²³ The specific criteria the Commission generally uses in determining whether to approve a motor carrier application is set forth in the policy statement published at Section 41.14 of the Commission's regulations:²⁴

(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:

²² *Application of Mexicana Express Service, LLC*, Docket No. A-2012-2329717 (Opinion and Order entered September 11, 2014); *Application of Armstrong Millien*, Docket No. A-2009-2099553 (Initial Decision dated January 19, 2010, adopted by Opinion and Order entered May 11, 2010).

²³ *Application of Yellow Cab Company of Pittsburgh, t/a Yellow X*, Docket No. A-2014-2410269 (Order entered May 22, 2014).

²⁴ 52 Pa.Code § 41.14.

(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.

The thrust of these considerations is to ensure that the Commission can carry out its duty to ensure the public safety and to protect the public interest as it relates to transportation services.

The Applicant bears the burden of demonstrating that the service proposed is necessary for the service, accommodation, convenience and safety of the public.²⁵ Indeed:

While we understand that different TNC firms may have different business models, it remains essential that an applicant for experimental service must provide adequate documentation and

²⁵ 66 Pa.C.S. § 332(a); *Application of Armstrong Millien*, Initial Decision, slip op. at 10. As with all Commission proceedings, this burden must be met by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *Petition for allowance of appeal denied*, 602 A.2d 863 (Pa. 1992).

protocols to ensure driver integrity, vehicle safety, and proper insurance coverage for the citizens of Pennsylvania.²⁶

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 cause unrestrained and destructive competition or would otherwise contravene the public interest.²⁷ This burden is heavy:

Subsection 41.14(c) emphasizes the advantages of healthy competition in the motor carrier industry and recognizes that “[t]he legislature in enacting the Public Utility Code did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. It is the public interest and convenience which the law seeks to protect.”²⁸

The purpose of the regulation is neither to protect the interests of existing public utilities nor to favor new entrants into the transportation market.²⁹ Rather, like the factors related to fitness and technical expertise, the purpose is to protect the public interest by ensuring the availability of safe and available transportation options.³⁰ Adverse impact in the form of lost business or revenue, by itself, is not sufficient. Rather, the protestant must show that a new entrant will impair its operations to such an extent that the grant of authority to the applicant would be contrary to the public interest.³¹

An applicant for motor carrier authority must demonstrate that it has the technical fitness to provide the proposed service by showing that it has sufficient financial resources to provide service, that its employees have sufficient technical expertise and experience to serve the

26 *Yellow X*, slip op. at 10.

27 52 Pa.Code § 41.14(c); *Application of Blue Bird Coach Lines, Inc.*

28 *Blue Bird Coach Lines, Inc.*, 72 Pa. PUC at 286 (quoting *Mobilefone of Northeastern Pennsylvania v. Pa. Pub. Util. Comm’n*, 458 A.2d 1030, 1034 (Pa.Cmwlth. 1983)). Indeed at least one administrative law judge has expressed disapproval of protests which do not allege any adverse impact on its business or the transportation market, but appear to be merely an attempt to create a barrier to market entry by forcing the applicant to defend the request for authority through litigation. See *Application of Stacia H. Grove*, Docket No. A-00114058 (Final Order July 21, 1998).

29 *E.g., Re Crystal Limo, Inc.*, 68 P.U.C. 505 (1988).

30 *Application of Blue Bird Coach Lines, Inc.* 72 Pa. PUC 262 (1990) (quoting *Seaboard Tank Lines, Inc. v. Pennsylvania Public Utility Comm’n*, 502 A.2d 762, 766 (Pa.Cmwlth. 1985)). See also *Elite Industries*.

31 *Crystal Limo, Inc.*

territory requested and that the applicant has an appropriate plan to comply with the Commission's driver and vehicle safety regulations. After carefully reviewing all of the evidence submitted for our consideration, we are constrained to conclude that the Applicant has failed to fulfill any of these requirements.³²

First, the Applicant failed to demonstrate that it has a plan or even a commitment to accept responsibility for its role in ensuring vehicle safety and driver integrity. The Applicant has no employees. Rather, its parent, Uber Technologies, Inc. assigned employees and some independent contractors to launch the service in Pittsburgh. Matthew Gore described his role as the associate general manager for "Uber Pittsburgh." He was clearly responsible for the business development and launch of the service. However, he never described his role as including regulatory oversight or governance of the drivers. He could not name an individual who would be responsible for regulatory compliance but "imagined" that it would be his replacement. As for governance of the drivers, it was repeatedly emphasized by Mr. Gore that the drivers were independent contractors and that Uber Technologies did not intend to exert control over their activities unless a passenger reported inappropriate activity, such as being under the influence of drugs or alcohol.

Although Uber Technologies performs initial criminal and driving history background checks, Mr. Gore could not articulate any plan for continuing to ensure that the drivers maintained appropriate driving history and insurance other than these initial requests. He did not know how often or whether the Applicant would make sure that a driver's vehicle registration or insurance was renewed on an annual basis. Uber does not even obtain a copy or review the driver's insurance policy. In sum, no plan for ongoing oversight of the drivers or their vehicles was articulated.

Neither the Applicant nor Uber Technologies perform the physical inspections of the vehicles used to provide transportation services. Instead, Uber relies solely on the annual vehicle inspections performed by the Pennsylvania Department of Transportation. There is no ongoing plan

³² We note that the Commission has granted the Applicant temporary authority based upon information that was available to the Commission when that application was filed. The Commission explicitly stated that none of the conclusions reached for the purpose of granting temporary authority were binding upon the Commission's consideration of the application for permanent authority. *Application of Rasier-PA LLC*, Docket No. A-2014-2429993 (Order entered July 24, 2014) at slip op. at 2, 22; Ordering Paragraph 5.

for any additional physical inspection of the vehicles. Rather, Uber relies on feedback from passengers regarding comfort issues and the appearance of the vehicle. Although Uber clearly maintains records, and indeed touts the annual income that can be derived from drivers using the Uber app,³³ the witness presented by the Applicant did not evidence any acknowledgement or appreciation for the additional maintenance needs that a vehicle used in its service may require above and beyond the wear and tear commonly experienced by the typical private passenger vehicle.

Second, the Applicant failed to provide any evidence regarding the technical expertise of any people who will be working on behalf of the Applicant. Although, the Applicant provided the name of the person who would be the new associate general manager of “Uber Pittsburgh”, that role was described as a business development position, not an operational position with definite responsibility for regulatory compliance. Moreover, that person is an employee of Uber Technologies, not an employee of the Applicant. Indeed, the Applicant does not have any employees and the record is silent as to its contractual relationship with Uber Technologies or the provision of service which will be provided to it by Uber Technologies.

Third, the Applicant provided no meaningful financial information which would permit the Commission to conclude that it had sufficient financial resources to meet its responsibilities. The financial statement submitted by the Applicant shows a \$1.3 million loss for the 12-month period ending July 2015. However, Mr. Gore did not know how any of the numbers on the statement were derived.

Fourth, the Applicant failed to demonstrate that the insurance policy which it holds or intends to obtain in connection with the proposed service will, with any degree of certainty, provide continuous coverage of the vehicles used in the operation.³⁴ Instead, the evidence shows that there are significant uncertainties about the quality of the Applicant’s proposed policy which at the very least, would result in delays in meeting any claims made by either a passenger or a driver. Further, it is unclear that either drivers or passengers have sufficient information to make a knowing

33 N.T. 75.

34 52 Pa.Code § 41.14(b)(3).

judgment about their coverage for any injuries which may result or their exposure to the claims of others.

Section 512 of the Public Utility Code, 66 Pa.C.S.A. § 512, sets forth the general objective and authority for the Commission to require insurance in this instance:

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters.

Applicant does not propose any independent or ongoing verification of its drivers' personal insurance policies beyond requesting a copy of each driver's Financial Responsibility card or declarations page at the outset and on the renewal date of the policy listed on such card. Tr. 546-548. Further, Applicant does not propose to examine its drivers' personal insurance policies, including any review of the livery exclusions in such policies and any review of whether those policies may be subject to termination or new rates if their insureds become Rasier drivers. Tr. 546-548, 651. This is despite the testimony of Applicant's witness that if a driver had a policy with a livery exclusion, that would raise a concern to Applicant. Tr. 677-678.

In addition, Applicant's witness testified that the coverage proposed by Applicant during stage one would be primary, however the driver's coverage would need to specifically recognize the driver's use of the vehicle in connection with the transportation network company in order to be valid in certain circumstances. Unless there is a livery exclusion or a specific endorsement, Applicant's policy during stage one would provide primary coverage. Tr. 557-558, 561, 581.

In addition, Applicant does not propose to direct its drivers to notify their personal auto insurers, in writing, of their intent to operate in the Applicant's service, or to maintain a copy of any such notices from their drivers to their insurers for any period of time. Tr. 516. Applicant does not propose to advise its drivers to check with their personal auto insurers about potential gaps in coverage or potential changes in or cancellation of their personal auto insurance

policies, beyond stating at an undefined point and manner that their drivers' personal auto policies may not provide coverage. Tr. 538, 545, 568-569.

The evidence of record establishes that a person becoming a driver for Applicant faces potential changes in that person's personal auto insurance, including possible cancellation or an increase in rates. Drivers may also incur personal financial liability resulting from gaps in the coverage proposed by Applicant, when considering the personal insurance coverage the driver may have and any livery exclusions in such insurance. Tr. 539-540, 686-691.

In addition, a person becoming a driver for Applicant faces possible personal financial responsibility as a result of terms and conditions Rasier imposes on its drivers in its agreements with them. Tr. 686-690; JB Taxi Exhibit A. Furthermore, the documents that Applicant has proposed to share with its drivers and its training program for its drivers is woefully inadequate in how it will educate its drivers concerning the three stages of insurance and the three insurance policies; the differences in the stages and the insurance among them. It also did not show how it will educate its drivers, in a uniform and standard way, regarding their personal liability exposure under its agreements with them or that may result from its proposed insurance, how to access Applicant's proposed three stages of insurance, or how to inform passengers or third parties how to do so in the event of an accident or claim. Tr. 552-554, 587-590, 686-691.

Applicant does not inform its insurer about its drivers or their records, and its insurer is not the initial contact on claims, in contrast to standard underwriting and claims handling practices in the insurance industry. Tr. 616-618, 655, 713-715, 729-730. The evidence demonstrates that the application doesn't propose adequate insurance or adequate insurance education and training for Applicant's drivers, its passengers and the general public, and it leaves unanswered several crucial insurance-related issues. As such, the application fails to truly protect the public.

A review of the testimony and the insurance policy that Applicant provided clearly reveals there are other gaps and uncertainties in its proposed insurance coverage that merit the disapproval of the application. Furthermore, Applicant's agreements with its drivers

and passengers have a variety of disclaimers and exclusions that may negate the coverage Applicant purports to provide. Among the terms:

“The Company... has no responsibility or liability for any transportation services provided to you [the passenger] by such third parties [the Rasier/Uber driver].”

“By entering into this Agreement and using this Application or Service, you [the passenger] agree that you shall... hold the Company... its subsidiaries [and] affiliates... harmless from and against any and all claims... arising out of or in connection with... your use ... of the Application or Service.”

“You acknowledge and agree that the entire risk arising out of your use of the application and service, and any third party services or products remains solely with you, to the maximum extent permitted by law.”

“The Company and/or its licensors shall not be liable for any loss, damage or injury which may be incurred by you, including but not limited to loss, damage or injury arising out of, or in any way connected with the service or application....”

JB Taxi Exhibit A, pp. 2 and 7-8.

Applicant never explained the impact of such separate agreements with its drivers and passengers on its insurance coverage, but instead, provided a conclusion, without any support, that the agreements and disclaimers of liability would not affect the Applicant’s liability, despite the fact that Applicant’s agreements suggest just the opposite.

In addition, Applicant’s proposed coverage, at least for stages two and three, is primary only as to a driver’s personal auto insurance, not any commercial policy or endorsement. If that exists, Applicant’s coverage would become contingent to the other coverage. Further, Applicant’s stages two and three coverage leave unanswered, whether any coverage exists in various circumstances.

The Commission requires insurers to file a Form E, a certificate establishing that the vehicles are lawfully insured. Applicant seems to assert that the Form E filing will somehow cure any problems existing with the terms set forth in their proposed agreements and insurance policies. As explained by the Insurance Federation:

“That is woefully inadequate. If ever the Commission should approach an application with a “trust but verify” stance, this is it. Rasier seems to adjust its coverage on the fly – it now proposes major changes from its original application, but it won’t detail them in writing. And to say it will adjust its policies to cover whatever the law requires begs the question of what the law requires. Granted, it may be impossible to anticipate and answer every scenario. But the purpose of an insurance policy is to answer – in advance, not after a protracted legal process – the parameters of coverage. Rasier has resisted this.

Rasier’s own conduct should put the Commission’s emphasis on verification over trust. It claims it is complying with the Commission’s ETA Order – its insurer filed a Form E as “proof”. But it cavalierly admits it is not requiring its drivers to notify their insureds, much less get documentation of that. And yet it asks the Commission to take its word about proper education and training of its drivers and passengers on insurance and claims, and having proper coverage even if it won’t produce all the policies?

The Commission should be wary. It should require that Rasier be open about its insurance coverage, with its drivers, with the public and with the Commission – and the Commission should establish ongoing monitoring of that. An order is only as effective as the compliance with it, and Rasier’s conduct under the ETA raises serious concerns.

Further, the Commission should require that Rasier bring in its insurer to answer questions. Rasier’s relation with its insurer – a surplus lines carrier and therefore without any Guaranty Fund protection if it goes under – is highly unusual: It found an insurer willing to take on unique risks without doing any background check on the drivers or cars it insures. And it found an insurer willing to have claims filtered through (and maybe handled by) Rasier, even though it is purportedly the one responsible.

Rasier may not want scrutiny of such lax insurance. But the Commission should, and should require much more than a cursory form letter of certification from Rasier’s insurer – it should require submission of the policies themselves, and it should conduct a thorough review and questioning of the policies and the insurer.”

Brief of The Insurance Federation of Pennsylvania, at 26-27.

The evidence demonstrates that the Applicant has failed to propose adequate insurance, education and training for Applicant’s drivers, its passengers and the general public, and it leaves unanswered several crucial insurance-related issues. As such, the application fails to protect the public and must be denied, on this basis alone.

Finally, we must consider the Applicant's record of compliance with the Commission regulations and its commitment to meeting the requirements of those regulations. It is appropriate for the Commission to withhold authority to operate where the record demonstrates that the Applicant is not likely to comply with Commission regulations in the future, which impairs the Commission's ability to protect the public safety.³⁵ The standard for evaluating an applicant's commitment to conducting its operations legally is "whether there is demonstrated a persistent disregard for, flouting or defiance of the Public Utility Code or Commission Orders."³⁶

The Applicant, Rasier-PA LLC, apparently has not yet launched operations in the Commonwealth, other than in Allegheny County.³⁷ However, Rasier LLC, another subsidiary wholly owned by the Applicant's parent, Uber Technologies, Inc. has been active in Allegheny County.³⁸ Rasier LLC holds no authority from the Commission. There is no evidence in the record why either Rasier LLC or Rasier-PA LLC were formed other than Mr. Gore's statement that these subsidiaries were created for "business and accounting reasons."³⁹ Yet, Uber Technologies, Inc. provides not only the digital platform utilized to provide transportation to Rasier LLC, but also provides the same digital platform to Rasier-PA LLC. Both subsidiaries are operated by employees of Uber Technologies. The CEO of Uber Technologies, Travis Kalanick, is the sole member of both Rasier-PA LLC, the Applicant, and Rasier LLC. By Order dated July 1, 2014, Uber Technologies was ordered to "cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in the personal vehicles...." This order was affirmed by the Commission by Order dated July 24, 2014.⁴⁰ Nonetheless, Uber Technologies continued to use its digital platform through Raiser LLC even when enjoined from doing so. Therefore, it is difficult

35 52 Pa.Code § 41.14(b).

36 *E.g., Application of Adamo Limousine, Ltd.*, Docket No. A-00115789 (Opinion and Order entered June 2, 2000).

37 The Applicant's parent, Uber Technologies, Inc. offers a different service of a different subsidiary, Gegen, Inc. which it calls "Uber Black" in the Philadelphia area.

38 *E.g.*, N.T. 81, 84, 261.

39 *E.g.*, N.T. 120-21.

40 Docket No. P-2014-2426846.

to conclude that Uber Technologies or its subsidiaries has any respect for the authority of the Commission or that it will submit itself to the Commission's authority in the future.⁴¹

This factor coupled with the Applicant's failure to present any cohesive plan for managing and policing driver safety and vehicle integrity beyond the initial engagement with the driver, strongly suggests that the Applicant is not committed to operating safely and legally. The Applicant clearly has not informed itself of the regulatory requirements of the Commonwealth, and also is not committed to playing its part in ensuring that the transportation service that it offers is safe and accommodates the public.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over "public utilities" as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102.
2. The grant of a certificate of public convenience is governed by Section 1103 of the Public Utility Code, which provides "A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103 (a).
3. The standard for determining when a certificate is necessary or proper for the service, accommodation, convenience or safety of the public is within the sound discretion of the Commission. *Elite Industries, Inc. v. Pa. Pub. Util. Comm'n*, 832 A.2d 428 (Pa. 2003).
4. Section 102 defines a transportation public utility as "Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . .

⁴¹ The Protestants made a motion to dismiss this application due to the Applicant's failure to provide trip data as directed by our order dated July 31, 2014. Although we have dismissed the Applicant's application for Allegheny County due to that behavior, we decline to do so here. The July 31, 2014 order was directed to the Allegheny County docket and not specifically to the docket for this application.

transporting passengers or property as a common carrier.” 66 Pa.C.S. § 102 “Public Utility” (1) (iii).

5. 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” 66 Pa.C.S. § 102.

6. 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” 66 Pa.C.S. § 102.

7. It is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.

8. The Commission has jurisdiction over this matter as the application seeks authorization to provide “experimental service,” which is a class of motor carrier service defined under 52 Pa.Code § 29.13.

9. Applicant must obtain a certificate of public convenience from the Commission in order to facilitate transportation service within the Commonwealth of Pennsylvania under 66 Pa.C.S. § 1101.

10. Applicant has failed to meet its burden of proof pursuant to 52 Pa.Code § 41.14.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Application of Rasier-PA LLC, a limited liability 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 Pennsylvania, excluding those which originate or terminate in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union, be denied.

2. That the Secretary mark the docket at Number A-2014-2424608 closed.

_____/s/____

Mary D. Long
Administrative Law Judge

Date: September 19, 2014

_____/s/____

Jeffrey A. Watson
Administrative Law Judge