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November 6, 2014

**VIA E-FILING**

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

Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc.  
Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Motion for Judgment on the Pleadings in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,



Karen O. Moury

KOM/tlg  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND ENFORCEMENT</b>	:	
	:	<b>Docket No. C-2014-2422723</b>
<b>v.</b>	:	
	:	
<b>UBER TECHNOLOGIES, INC.</b>	:	

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**NOTICE TO PLEAD**

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TO: Michael L. Swindler, Esquire  
Stephanie M. Wimer, Esquire  
Wayne T. Scott, Esquire  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of Uber Technologies, Inc. within **twenty (20) days** from service of this Notice, the facts set forth by Uber Technologies, Inc. in the Motion may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Uber Technologies, Inc., 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, Esq.  
Buchanan Ingersoll & Rooney PC  
409 N. Second Street  
Suite 500  
Harrisburg, PA 17101

Dated: November 6, 2014



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND ENFORCEMENT</b>	:	
	:	<b>Docket No. C-2014-2422723</b>
<b>v.</b>	:	
	:	
<b>UBER TECHNOLOGIES, INC.</b>	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Uber Technologies, Inc. (“UTI”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Motion for Judgment on the Pleadings, pursuant to Section 5.102(a) of the Commission’s regulations, 52 Pa. Code § 5.102(a), requesting dismissal of the complaint filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”), and in support thereof, avers as follows:

**I. INTRODUCTION**

1. I&E’s complaint must be dismissed due to the Commission’s lack of jurisdiction over the licensing of software by a software company and because the complaint fails to set forth factual allegations to support the claim that any activities violated Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101 (“Code”).

2. The complaint alleges that on March 13, 2014, UTI announced a launch of ridesharing services in Allegheny County and that eleven rides were arranged through UTI’s mobile application software (“App”) on various dates between March 31 and April 21, 2014, and further alleges that these activities violated Code Section 1101, Pa.C.S. § 1101, by offering to

broker and by brokering the transportation of persons for compensation in Allegheny County without holding a brokerage license from the Commission.

3. Even if accepted as true, the factual allegations of the complaint fail to establish that UTI offered to broker or brokered transportation. Rather, the allegations, if accepted as true, demonstrate that UTI announced a launch of ridesharing services in Allegheny County and licensed its Internet and mobile application software (“App”) allowing passengers to connect with drivers. Neither the alleged announcement of a launch of ridesharing services nor the alleged licensing of software, if proven, constitutes the offering to broker or the brokering of the transportation of persons, as defined by Code Section 2501(b), 66 Pa.C.S. § 2501(b). Therefore, the complaint must be dismissed because it alleges activities which do not violate the Code and over which the Commission does not have jurisdiction.

4. Moreover, Code Section 1101, the provision with which UTI is charged by the complaint of violating, addresses the need for a proposed public utility to obtain a certificate of public convenience. 66 Pa.C.S. § 1101. A “public utility” is defined by Code Section 102 as including a person or corporation that is “transporting passengers or property as a common carrier.” 66 Pa.C.S. § 102. Since the complaint contains no factual allegations that UTI is transporting passengers, it must be dismissed.

## **II. BACKGROUND**

5. On June 5, 2014, I&E filed a complaint against UTI alleging that it announced the launch of ridesharing services in Pittsburgh, Pennsylvania on March 13, 2014 and that I&E Motor Carrier Enforcement Manger Charles Bowser (“Office Bowser”) arranged eleven rides using the UTI App between March 31, 2014 and April 21, 2014. UTI filed an answer on June 26, 2014, admitting the licensing of its App, which connects passengers and drivers in select

cities throughout the world, and denying that the licensing of software by a software company requires a brokerage license from the Commission.

6. A hearing was scheduled for October 23, 2014. I&E requested a continuance of that hearing, which was granted. As of this date, the hearing has not been rescheduled, but I&E and UTI are required to provide three proposed hearing dates to the Administrative Law Judges by November 7, 2014. Therefore, the filing of this Motion for Judgment on the Pleadings will not delay the orderly disposition of this proceeding.

### **III. APPLICABLE LEGAL STANDARDS**

7. A motion for judgment on the pleadings may be granted if the applicable pleadings, depositions, answers to interrogatories and admissions demonstrate that there is no genuine issue of material fact in dispute and the moving party is entitled to judgment in its favor as a matter of law. 52 Pa. Code § 5.102(d)(1).

8. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. *Kenneth E. Nein v. UGI Utilities, Inc.*, Docket No. C-2012-2298099 (Final Order entered November 9, 2012) (citing *Williams v. Lewis*, 446 A. 2d 682 (Pa.Super. 1983)); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d//b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Id.* (citing *Reuben v. O'Brien*, 496 A. 2d 913 (Pa.Super. 1985)).

### **IV. ARGUMENT**

9. A hearing in this proceeding would be a fruitless exercise because even if accepted as true, the factual allegations of the complaint fail to establish that UTI offered to

broker or brokered transportation with the meaning of Code Section 2501(b), 66 Pa.C.S. § 2501(b). Moreover, the complaint contains no factual allegations that UTI transported persons to support its claim that UTI violated Code Section 1101, 66 Pa.C.S. § 1101. Therefore, a hearing is not necessary and would not serve the public interest in this matter, and the complaint must be dismissed. *See* 66 Pa.C.S. § 703(b).

10. The complaint alleges that on March 13, 2014, UTI announced a launch of ridesharing services in Allegheny County and that eleven rides were arranged through UTI's mobile application software ("App") on various dates in March and April 2014, and further alleges that these activities violated Code Section 1101, 66 Pa.C.S. § 1101, by offering to broker and by brokering the transportation of persons for compensation in Allegheny County without holding a brokerage license from the Commission.

11. Even if accepted as true, the factual allegations of the complaint fail to establish that UTI operated as a broker. Rather, the allegations, if accepted as true, demonstrate that UTI announced a launch of ridesharing services and licensed its App that allowed passengers to connect with drivers. Neither the alleged announcement of a launch of ridesharing services nor the licensing of software constitutes the offering to broker or the brokering of the transportation of persons, as defined by Code Section 2501(b), 66 Pa.C.S. § 2501(b). Therefore, the complaint alleges activities over which the Commission does not have jurisdiction, and the complaint must be dismissed.

12. A broker is defined by Code Section 2501(b) 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 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.

66 Pa.C.S. § 2501(b). This statutory definition of “broker” does not include the announcement of a launch of ridesharing services or the licensing of software by a software company.

13. The Commission has referred to a broker as one who “arranges for the transportation of goods” and “acts as a middleman to bring together shippers...and carrier that are capable of performing the transportation.” *Re Friedman’s Exp. Inc.*, 73 Pa. P.U.C. 152 (1990). The Commission has consistently emphasized the broker’s role in arranging transportation. *See, e.g., Waddington v. Pa. Public Utility Comm’n*, 670 A.2d 199 (Pa. Commw. 1995); *Pa. Public Utility Comm’n v. Baran*, 1982 WL 213174 (Pa. P.U.C. Mar. 8, 1992); *Application of PTM Transportation, LLC for a Brokerage License*, 2013 WL 6835119 (Pa. P.U.C. Dec. 19, 2013).

14. The licensing of software which allows the riding public to connect with available drivers does not equate to arranging transportation. Rather, consumers accessing drivers through the App is no different than booking flights and making hotel reservations through Expedia. Likewise, announcing that ridesharing services are available through the App does not constitute holding out to arrange transportation.

15. When the General Assembly included the definition of broker in the Code, it could not have envisioned that alternatives such as the App would eventually be possible due to advancements in technology. On the contrary, the App is a game-changing technology that has challenged traditional notions of Pennsylvania regulation of motor carriers. Indeed, as the Commission has recognized, the introduction of bills regarding ridesharing services in the General Assembly over the past several months “suggests, at a minimum, that their place within our regulations is unclear.” *See Application of Rasier-PA for Emergency Temporary Authority*, Docket No. A-2014-2429993 (Order entered July 24, 2014 at p. 20). Given that providing

ridesharing services is unclear under the existing framework, the mere licensing of software by a software company, without any involvement in arranging transportation, is even further removed from the statutory definition of broker.

16. Similarly, in evaluating an application filed by Rasier-PA LLC, a UTI subsidiary, Administrative Law Judges (“ALJs”) Long and Watson opined that even when a company proposes to contract with independent operators to provide transportation services through the App, such activity (which goes further than the licensing of the software by UTI) does not fall within the definition of “broker” under Code Section 2501(b). *See Application of Rasier-PA LLC*, Docket No. A-2-14-2424608 (Recommended Decision issued on September 25, 2014 at pp. 28-29).

17. Moreover, without alleging that UTI provided transportation services, I&E claims that its activities violated Code Section 1101, 66 Pa.C.S § 1101. Complaint ¶¶ 12-13. Code Section 1101 requires a “proposed public utility” to obtain a certificate of public convenience from the Commission before it begins to offer, render, furnish or supply service within Pennsylvania. 66 Pa.C.S § 1101. Code Section 102 defines a “public utility” as a person or corporation that is “transporting passengers or property as a common carrier” and excludes “brokers” from the definition of “common carrier.” 66 Pa.C.S. §102. Since the complaint contains no factual allegations that UTI is transporting passengers, the complaint must be dismissed.

V. **CONCLUSION**

WHEREFORE, for the foregoing reasons, Uber Technologies, Inc. respectfully requests that the Commission grant this Motion for Judgment on the Pleadings, dismiss the complaint filed by the Bureau of Investigation and Enforcement and grant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 6, 2014



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(717) 237-4820

*Attorneys for Uber Technologies, Inc.*

**BEFORE THE  
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<b>v.</b>	:	
	:	
<b>UBER TECHNOLOGIES, INC.</b>	:	

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**

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Dated this 6<sup>th</sup> day of November, 2014.



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Karen O. Moury, Esq.