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November 18, 2014

**VIA E-FILING**

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

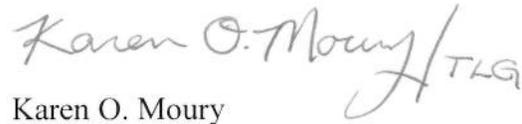
Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc.  
Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Answer of Uber Technologies, Inc. to Motion to Compel of Bureau of Investigation and Enforcement relating to Interrogatories and Request for Production of Documents, Set II, 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>	:	

**ANSWER OF UBER TECHNOLOGIES, INC. TO MOTION TO COMPEL OF  
BUREAU OF INVESTIGATION AND ENFORCEMENT RELATING TO  
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS –  
SET II**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES LONG AND WATSON:

Pursuant to 52 Pa. Code § 5.342(g)(1), through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, Uber Technologies, Inc. (“UTI”) hereby files this Answer to the Motion to Compel filed by the Bureau of Investigation and Enforcement (“I&E”) on November 13, 2014 relating to the Interrogatories and Requests for Production – Set II (“Interrogatories”) propounded by I&E on October 24, 2014, and in support hereof, avers as follows:

**I. INTRODUCTION**

1. The Interrogatories propounded by I&E are an improper use of the Commission’s discovery process which should not be condoned. Because the Interrogatories seek extensive information which is privileged, irrelevant and protected from disclosure, they exceed the permissible bounds of discovery under the Commission’s regulations and the Motion to Compel must be denied.

2. I&E filed the pending complaint on June 5, 2014, alleging that UTI announced the launch of ridesharing services in Allegheny County in March 2014 and that an I&E

enforcement officer arranged eleven rides in March and April 2014 using UTI's mobile application ("App") between points in Allegheny County.

3. More than five months later, and more than three months after the Commission's grant of emergency temporary authority ("ETA") to Rasier-PA LLC ("Rasier-PA"), a wholly owned UTI subsidiary, to provide ridesharing services in Allegheny County,<sup>1</sup> I&E is seeking to obtain irrelevant, privileged and protected information from UTI and to expand the scope of the complaint. As such, responding to the Interrogatories would impose unnecessary and unreasonable burdens on UTI.

4. Contrary to I&E's claims in the Motion to Compel, UTI has not argued that the ETA negates any allegations of prior unlawful operations, and UTI stands ready to defend those allegations. What is puzzling to UTI is why I&E is seeking to expand the scope of this proceeding and impose significant discovery burdens on UTI, completely ignoring the fact that its subsidiary is fulfilling critical and immediate transportation needs of the public in Allegheny County.

5. In establishing I&E in 2011, the Commission authorized it to serve as the prosecutory bureau for purposes of "representing the public interest" in ratemaking, service and enforcement matters.<sup>2</sup> When the public clamored for ridesharing services due to the inadequacy of the existing transportation options in Allegheny County, the Commission responded by granting ETA to Rasier-PA. As UTI's subsidiary is providing a needed and valued service that the Commission has determined is in the public interest, I&E's attempts to expand the scope of

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<sup>1</sup> *Application of Rasier-PA LLC*, Docket No. A-2014-2429993 (Order adopted July 24, 2014).

<sup>2</sup> *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order adopted August 11, 2011).

the complaint proceeding and subject UTI to overly burdensome and unnecessary discovery are contrary to the public interest and a waste of utility ratepayer resources.

6. By the Interrogatories, I&E seeks a wide array of privileged, irrelevant and protected information, including licensing agreements between UTI and its affiliates; physical addresses of UTI and its affiliates; the number of employees at each location; the entity that approves individuals to become operators; the manner in driver software is downloaded to a smartphone; the entity that maintains commercial automobile insurance; the entity that maintains credit card information of potential passengers; the recipient of the credit card payment; and the individual(s) with knowledge of the number of transactions that were provided to persons in Pennsylvania for certain time periods.

7. In the Motion to Compel, I&E claims that the Interrogatories were crafted in large part to identify the UTI affiliate which conducted the operations that are the subject of the complaint. However, as a Commission representative, I&E has access to the transcripts produced during the hearings on Rasier-PA's experimental applications when its witness identified the UTI subsidiary which was operating in Allegheny County prior to the grant of ETA.<sup>3</sup> It is not UTI's obligation to spoon feed I&E information to which it already has access. I&E's attempts to go on an impermissible fishing expedition to gather extensive information that is privileged and irrelevant to the complaint, all in the name of obtaining the identification of an entity that was publicly disclosed on August 18, 2014, are inexcusable.

8. I&E also makes several baseless and inflammatory assertions in its Motion to Compel. Specifically, I&E claims that UTI is seeking to "avoid Commission regulation" and has made a "corporate decision to simply ignore the Commission." Motion to Compel at ¶¶ 3 and

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<sup>3</sup> See *Applications of Rasier-PA LLC*, Docket Nos. A-2014-2416127 and A-2014-2424608.

19. It further suggests that UTI has sought to delay the complaint proceeding. Motion to Compel at ¶ 3. The assertions that UTI is seeking to avoid Commission regulation or to simply ignore the Commission make no sense in light of the ETA obtained by Rasier-PA and the pending applications for experimental authority to provide ridesharing services in Allegheny County and throughout Pennsylvania. As to a delay in the complaint proceeding, it is I&E that has chosen to forego prosecuting or attempting to settle the complaint and instead to await the receipt of information from UTI that is privileged and irrelevant to the allegations of the complaint.

9. In short, just as any other complainant coming before the Commission, I&E has the burden to substantiate the allegations of the complaint and neither needs nor is entitled to the information sought by the Interrogatories to pursue the complaint.

## **II. ARGUMENT**

10. Under applicable legal standards, the Interrogatories exceed the bounds of permissible discovery, and the Motion to Compel must be denied. The Commission's regulations provide that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). The regulations further state that while inadmissibility at the hearing is not a ground for objection, the information sought must be "reasonably calculated to lead to the discovery of admissible evidence." *Id.* Further, discovery is not permitted which is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the party; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the party. 52 Pa. Code § 5.361(a).

11. This entire set of Interrogatories seeks privileged, irrelevant and protected information. Clearly, I&E is engaged in an impermissible fishing expedition designed to gather extensive information that has no bearing on the allegations of the complaint. While I&E may be curious about the operations of UTI and its subsidiaries, nothing in these Interrogatories is needed to dispose of the complaint I&E filed on June 5, 2014.

12. Moreover, because Rasier-PA is providing Commission-approved ridesharing services that are critically needed in Allegheny County, furnishing responses to the Interrogatories would cause unreasonable annoyance and burden to UTI and would require the making of an unreasonable investigation, which the regulations do not permit. *See* 52 Pa. Code § 5.361(a). Through seeking privileged, irrelevant and protected information, without regard for the public interest and the burdens that production would impose on UTI, I&E is abusing the Commission's discovery process which should not be condoned.

13. By Interrogatory No. 1, I&E seeks copies of licensing agreements between UTI and other entities. As commercially sensitive information, the private licensing agreements between UTI and other entities are privileged material and are therefore not discoverable under the Commission's regulations. *See* 52 Pa. Code § 5.321(c). The Commission has previously found that a party is not required to provide commercially sensitive data as part of discovery even pursuant to a protective order. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Order dated March 16, 2012).

14. Additionally, the licensing agreements are irrelevant to the complaint proceeding and therefore exceed the bounds of impermissible discovery. *See* 52 Pa. Code § 5.321(c). The

Commission has emphasized that the standard for discovery is relevance, not curiosity. *See Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Company*, Docket No. R-2011-2232243 (Order on Motion to Compel dated July 21, 2011 at 21-22).

15. The complaint filed by I&E in this proceeding contains allegations about a launch of Uber X on March 13, 2014 and eleven occasions on which Officer Bowser was allegedly transported by drivers that he requested using the UTI App. Nothing in the licensing agreements between UTI and other entities would have any probative value regarding those allegations.

16. Similarly, most of the remaining Interrogatories seek irrelevant information. In particular, I&E has failed to explain the relevance of any of the following discovery requests:

- Physical addresses of UTI or its affiliates (Interrogatory Nos. 2 and 4)
- Number of employees of UTI or its affiliates at each location (Interrogatory Nos. 3 and 5)
- Entity that approves or denies individuals' applications to become a driver partner (Interrogatory Nos. 6 and 7)
- Entity or individual that downloads driver software (Interrogatory Nos. 8, 9 and 10)
- Entity that maintains commercial auto insurance policy (Interrogatory Nos. 11 and 12)
- Entity that maintains credit card information of potential passengers (Interrogatory Nos. 13 and 14)
- Entity that is recipient of credit card payment (Interrogatory Nos. 15-16)

17. I&E claims that these Interrogatories were crafted to identify the UTI affiliate which conducted the operations that are the subject of the complaint. However, as a Commission representative, I&E has access to the transcripts produced during the hearings on Rasier-PA's experimental applications when the Rasier-PA witness identified the UTI subsidiary which was operating in Allegheny County prior to the grant of ETA. It is not UTI's obligation to

spoon feed I&E information to which it already has access. I&E's attempts to go on an impermissible fishing expedition to gather privileged and irrelevant information, all in the name of obtaining the identification of an entity that was publicly disclosed on August 18, 2014, are inexcusable.

18. Presumably when I&E filed its complaint on June 5, 2014, it was prepared to substantiate those allegations. A complaining party is expected to put forth the support for its allegations or have the complaint dismissed. The Commission expects no less even of *pro se* complainants. *See, e.g., Scheffer v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2153353 (September 22, 2011).

19. Further, a party that has initiated a legal proceeding through the filing of a complaint should be prepared at the time the complaint is filed to substantiate those allegations and move forward with the proceeding. *See Pa. Public Util. Comm., Bureau of Investigation and Enforcement v. Glacial Energy of Pennsylvania, Inc.*, Docket No. C-2012-2297092 (Order Granting Motion for Prehearing Conference dated November 1, 2012 and Prehearing Order #2 dated January 2, 2013). Rather than fulfill its burden to prosecute the complaint that it filed over five months ago, and present the evidence it gathered to substantiate those allegations, I&E is improperly seeking to obtain additional information from UTI that goes well beyond the parameters of the complaint. If I&E is not prepared to prosecute the complaint it filed, it should be dismissed outright.

20. As to Interrogatory Nos. 17-20, I&E seeks information about the launch of ridesharing services in Allegheny County that is protected under the Fifth Amendment of the United States Constitution and would therefore not be admissible at hearing or reasonably calculated to lead to the discovery of admissible evidence. *See* 52 Pa. Code § 5.361(a).

21. The United State Supreme Court has found that the Fifth Amendment privilege may be asserted in an administrative proceeding and protects against disclosures that the party reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. *See Kastigar et al. v. United States*, 406 U.S. 441 (1972). Section 3310 of the Public Utility Code (“Code”) provides that any person or corporation operating as a broker, without a license issued by the Commission “shall be guilty of a summary offense, and any subsequent offense by such person or corporation shall constitute a misdemeanor of the third degree.” 66 Pa.C.S. § 3310. Given the allegations in the complaint about unlawful brokering, which have not been proven and the Commission has not yet adjudicated, disclosure of information about the launch of ridesharing services could result in prosecution under Code Section 3310 and therefore is protected by the Fifth Amendment.

22. I&E claims that the Fifth Amendment protections are not available to corporations. However, I&E fails to recognize that corporations can only act through their agents. Therefore, officers and agents of a corporation can claim the benefits afforded by the Fifth Amendment in responding to a complaint or answering interrogatories, even when acting on behalf of the corporation. *Kohn v. State*, 336 N.W. 2d 292, 298-99 (Minn. 1983).

23. Moreover, if a corporation can be charged with criminal offenses for violations of Code Section 3310, it makes sense that they or their agents can assert the Fifth Amendment privilege. This analysis is bolstered by the 2010 Supreme Court decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), in which the Court held for the first time that a corporation enjoys First Amendment rights of association and free speech.

24. With respect to Interrogatory No. 21, the identification of individuals who have access to information about the number of rides provided during specific periods is privileged

material; is irrelevant to the subject matter of this action; would not be admissible at hearing; and would cause unreasonable annoyance and burden to UTI and require the making of an unreasonable investigation. Therefore, the identification of individuals who have access to this information exceeds the permissible bounds of discovery.

25. As UTI has previously explained in its Answer to the Motion to Compel filed on September 3, 2014 which is fully incorporated herein by reference, the number of rides is highly proprietary and commercially sensitive. Disclosure of this confidential information would be harmful to UTI's business, and as such, constitutes privileged material. The Commission's regulations do not permit the discovery of matter that is privileged. *See* 52 Pa. Code § 5.321(c); 52 Pa. Code § 5.361(a). It is pointless to provide the names of individuals with access to confidential information that is not properly discoverable.

26. In addition, data about any other transactions goes well beyond the scope of the complaint which only alleges the launch of ridesharing on March 13, 2014 and eleven occasions on which Officer Bowser obtained rides using the UTI App. Information about any other transactions is not relevant to these specific allegations. The Commission's regulations do not permit discovery of information that is not relevant to the subject matter of the action. *See* 52 Pa. Code § 5.321(c). By seeking the name of an individual to provide information unrelated to the allegations, Interrogatory No. 21 is an impermissible fishing expedition.

27. Further, Interrogatory No. 21 seeks information that is protected under the Fifth Amendment of the United States Constitution. Therefore, it seeks information that is not admissible at hearing or would be reasonably calculated to lead to the discovery of admissible evidence. *See* 52 Pa. Code § 5.321(c).

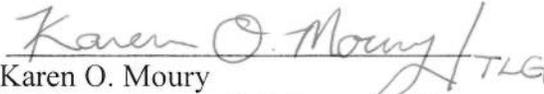
28. Given the fact that Rasier-PA is providing Commission-approved ridesharing services that are critically needed in Allegheny County, furnishing these responses would cause unreasonable annoyance and burden to UTI and would require the making of an unreasonable investigation. As such, Interrogatory No. 21 exceeds the permissible bounds of discovery. *See* 52 Pa. Code § 5.361(a).

29. As to I&E's claim that a UTI affiliate has provided aggregated trip data and other detailed data, as well as total rides by zip code, to the California Public Utility Commission, I&E is misinformed. To the contrary, UTI has taken a similar position in other jurisdictions that it is advancing here.

WHREFORE, for the reasons set forth above, Uber Technologies, Inc. respectfully requests that its objections to the Bureau of Investigation and Enforcement's Interrogatories and Request for Production of Documents – Set II be sustained and that I&E's Motion to Compel be denied.

Respectfully submitted,

November 18, 2014

  
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*Attorneys for Uber Technologies, Inc.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF  
INVESTIGATION AND ENFORCEMENT**

**v.**

**UBER TECHNOLOGIES, INC.**

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**Docket No. C-2014-2422723**

CERTIFICATE OF SERVICE

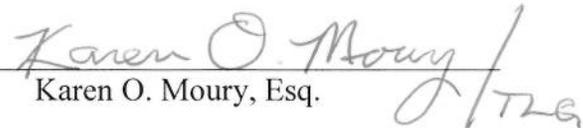
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via Email and First Class Mail**

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Dated this 18<sup>th</sup> day of November, 2014.

  
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Karen O. Moury, Esq.