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December 12, 2014

VIA E-FILING

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

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

Dear Secretary Chivetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Motion Of Uber Technologies, Inc. For Stay Of Effective Date of Interim Order On Motion For Sanctions 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/bb
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF UBER TECHNOLOGIES, INC. FOR STAY OF
EFFECTIVE DATE OF INTERIM ORDER ON MOTION FOR SANCTIONS**

TO THE HONORABLE MARY D. LONG AND JEFFREY A. WATSON:

Pursuant to Section 5.103 of the Commission’s regulations, 52 Pa. Code § 5.103, Uber Technologies, Inc. (“UTI”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Motion for Stay (“Motion”), seeking a stay of the effective date of the Interim Order which was issued by Administrative Law Judges (“ALJs”) Mary D. Long and Jeffrey A. Watson on November 26, 2014 ruling on the Motion for Sanctions filed by the Bureau of Investigation and Enforcement (“I&E”), and in support thereof, avers as follows:

I. INTRODUCTION

1. By Interim Order on Motion for Sanctions dated November 26, 2014 (“*Sanctions Order*”), the ALJs directed UTI to serve answers to specific I&E discovery on or before December 12, 2014, and ordered that if it fails to provide these answers, it shall be assessed a civil penalty in the amount of \$500 per day. The discovery requests concern the number of trips that were arranged through the UTI smartphone application (“App”) between points in Pennsylvania during certain time periods.

2. On December 5, 2014, the Pennsylvania Public Utility Commission (“Commission”) entered Orders in the matters of *Application of Rasier-PA LLC for Experimental*

Service Authority Between Points in Allegheny County, Docket No. A-2014-2416127 (Order adopted November 13, 2014) (“*Rasier-PA Allegheny County Order*”), and *Application of Rasier-PA LLC for Experimental Service Authority Between Points in Pennsylvania*, Docket No. A-2014-2424608 (Order adopted November 13, 2014) (“*Rasier-PA Statewide Order*”). By the *Rasier-PA Allegheny County Order* and the *Rasier-PA Statewide Order*, the Commission approved the applications subject to various conditions, including the provision by Rasier-PA LLC (“Rasier-PA”) of the same trip data that is the subject of the *Sanctions Order*. The trip data may be filed on a confidential basis and is due to be filed no later than January 5, 2015.

3. UTI seeks a stay of the effective date of the *Sanctions Order* on three grounds: (a) to sync the timing of the due date for the disclosure of trip data in this complaint proceeding and the application proceedings referenced in paragraph 2; (b) to permit UTI and I&E to engage in meaningful settlement discussions, which have been initiated through a proposed term sheet provided by UTI to I&E on December 11, 2014 and may alleviate the need for the *Sanctions Order*; and c) only the Commission has the statutory authority to impose a civil penalty on a party pursuant to Section 3301 of the Public Utility Code (“Code”), 66 Pa.C.S. § 3301, and even then, the Commission’s authority does not extend to imposing a civil penalty for failure to comply with an ALJ’s interim order.

II. BACKGROUND

4. 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 arranged eleven rides using UTI’s 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.

5. On August 8, 2014, I&E served Interrogatories and Requests for Production of Documents – Set I (“Interrogatories”) upon UTI. These Interrogatories sought the number of transactions/rides provided to passengers in Pennsylvania via connections made with drivers through the App during specific time periods, and customer data including invoices, receipts, e-mails, records and documents sent to individuals in relation to rides they received via the App.

6. On August 18, 2014, UTI filed objections to the Interrogatories, noting that the customer and trip information is protected from disclosure by the Commission’s discovery rules and well-established case law. UTI argued that the customer information is confidential and that the commercially sensitive and proprietary trip data constitutes a trade secret, especially due to its narrow focus with respect to time periods and the limited geographic region. UTI also highlighted concerns with the broad scope of Pennsylvania’s Right-to-Know Law, 65 P.S. §§ 67.101-67.3104. Additionally, UTI contended that the discovery was not relevant to the allegations in the complaint and that its production would not lead to the discovery of admissible evidence.

7. I&E filed an Amended Motion to Compel on August 29, 2014, and UTI filed an Answer to I&E’s Amended Motion to Compel on September 3, 2014. In its Answer to the Motion to Compel, UTI reiterated its earlier objections, while also arguing that production of the data would cause an unreasonable burden, particularly when UTI’s subsidiary, Rasier-PA, is lawfully providing ridesharing network services in response to a critical and immediate public need in Allegheny County. As compliance with the Commission’s regulatory and statutory

requirements has been achieved, UTI contended that the production of documents relating to past practices is unduly burdensome.

8. On October 3, 2014, the ALJs issued an Interim Order granting I&E's Motion to Compel ("*Interim Discovery Order*") and directing UTI to serve responses to the Interrogatories within ten days.

9. On October 6, 2014, UTI filed a Petition for Certification requesting interlocutory review by the Commission of the *Interim Discovery Order*. On October 14, 2014, UTI filed a Brief in Support of the Petition for Certification and I&E filed a Brief in Opposition to the Petition.

10. On October 17, 2014, the ALJs issued an Interim Order denying the Petition for Certification. On the same date, the ALJs issued an Interim Order amending the *Interim Discovery Order* to permit UTI to redact credit card numbers, social security numbers, e-mail addresses, telephone numbers or other personal identifying information for the trip-related documents requested by I&E.

11. On November 7, 2014, I&E filed a Motion for Sanctions seeking: a) imposition of a civil penalty in the amount of \$1,000 per day for each day going forward from October 17, 2014 to the date when UTI complies with the *Interim Discovery Order*; b) permission to use a proxy number of rides taken using the App during the specified time periods without objection or cross examination; c) prohibition on UTI from asserting a defense that a subsidiary brokered or provided transportation services; and d) any other sanction that the ALJs deem appropriate.

12. By its Answer opposing the Motion for Sanctions filed on November 12, 2014, UTI contended that the proposed sanctions were inappropriate because: a) UTI has lodged valid objections to the discovery, which have not been reviewed by the Commission; b) UTI's

discovery responses are not necessary for I&E to prosecute the complaint it filed on June 5, 2014; c) the sanctions proposed by I&E go well beyond what is permitted for failure to comply with a discovery order; and d) the imposition of the proposed sanctions would exceed the Commission's statutory authority and violate fundamental principles of due process.

13. By the *Sanctions Order*, the ALJs granted the Motion for Sanctions and directed UTI to serve the answers to the Interrogatories on or before December 12, 2014. The *Sanctions Order* further provided that if UTI fails to serve the answers, it shall be assessed a civil penalty in the amount of \$500 per day for each day it fails to answer until the conclusion of the evidentiary hearing on the above-captioned complaint.

III. ARGUMENT

14. By the *Rasier-PA Allegheny County Order* and the *Rasier-PA Statewide Order*, the Commission granted the applications of UTI's subsidiary, Rasier-PA, to provide experimental service of the nature that is the subject of the complaint. In granting the applications, the Commission imposed a series of conditions on Rasier-PA, including production of the trip information that was required by an Interim Order dated July 31, 2014 at Docket No. A-2014-2416127. See *Rasier-PA Allegheny County Order* at 27 and Appendix A, Section D, Paragraph 5. Pursuant to the *Rasier-PA Allegheny County Order* and the *Rasier-PA Statewide Order*, this information may be provided to the Commission under seal and is due by January 5, 2015.

15. Given the January 5, 2015 due date for the disclosure of trip data in the application proceedings, UTI submits that it makes sense to stay the effective date of the *Sanctions Order* so that the due date for answers to the Interrogatories is the same.

16. In addition, on December 11, 2014, UTI provided a proposed settlement term sheet to I&E, on which a meeting is scheduled for December 15, 2014. Staying the effective date of the Sanctions Order to January 5, 2015 affords the parties an opportunity to engage in meaningful settlement discussions and possibly alleviate the need for the *Sanctions Order*.

17. Moreover, Code Section 3301 authorizes the Commission, not an ALJ, to impose a civil penalty on an entity that violates or fails to comply with the Code, Commission regulations or an order of the Commission. 66 Pa.C.S. § 3301(a). Since the *Sanctions Order* was issued by the ALJs and has not been reviewed or adopted by the Commission, and even the Commission does not have statutory authority to impose a civil penalty for an entity's failure to comply with an interim order of an ALJ, the *Sanctions Order* is not enforceable. Therefore, at a minimum, its effective date should be stayed to allow the due date for the production of trip data in the complaint proceeding to align with the due dates in application proceedings.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Uber Technologies, Inc. respectfully requests that the Commission grant the Motion for Stay of Effective Date of Interim Order on Motion for Sanctions and grant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: December 12, 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	:	
	:	Docket No. C-2014-2422723
v.	:	
	:	
UBER TECHNOLOGIES, INC.	:	

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 12th day of December, 2014.



Karen O. Moury, Esq.