Buchanan Ingersoll & Rooney PC

Karen O. Moury

717 237 4820
Karen.moury@bipc.com

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

March 27, 2015

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., *et al.*, Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., *et al.*, I have enclosed for electronic filing the Answer of Rasier-PA LLC to the Amended Complaint of Bureau of Investigation and Enforcement, in the above-captioned matter.

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

Sincerely,

Karen O. Moury BB

Karen O. Moury

KOM/bb
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF RASIER-PA LLC
TO THE AMENDED COMPLAINT OF
BUREAU OF INVESTIGATION AND ENFORCEMENT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Rasier-PA LLC ("Rasier-PA"), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, answers the above-captioned Amended Complaint pursuant to Section 5.61 of the Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.61, which was served on Rasier-PA on February 27, 2015,[1] as follows:

1. The allegations in this paragraph contain conclusions of law to which no response is required. It is averred that the provisions of the Public Utility Code, 66 Pa.C.S. §§ 101, et seq. ("Code"), speak for themselves.

2. The allegations in this paragraph are conclusions of law to which no response is required. It is averred that the Commission Order entered on September 2, 1994 at Docket No. M-00940593 and Code Section 308.2(a)(11), 66 Pa.C.S. § 308.2(a)(11), speak for themselves.

[1] By Interim Order dated March 17, 2015, Administrative Law Judges Long and Watson granted the unopposed request of Rasier-PA for an extension of time until March 27, 2015 to file this Answer.

3. Denied. It is denied that UTI maintains a principal place of business at 182 Howard Street #8, San Francisco, CA 94105. To the contrary, it is averred that UTI maintains a principal place of business at 1455 Market Street, 4th Floor, San Francisco, CA 94103.

4. Denied. It is denied that Rasier LLC maintains a principal place of business at 182 Howard Street #8, San Francisco, CA 94105. To the contrary, it is averred that Rasier LLC maintains a principal place of business at 1455 Market Street, San Francisco, CA 94103.

5. Denied. It is denied that Gegen LLC maintains a principal place of business at 182 Howard Street #8, San Francisco, CA 94105. To the contrary, it is averred that Gegen LLC maintains a principal place of business at 109 South 13th Street, Unit 2S, Philadelphia PA 19107.

6. Admitted. It is admitted that Rasier-PA LLC ("Rasier-PA") maintains a principal place of business at 109 South 13th Street, Unit 2S, Philadelphia PA 19107.

7. Admitted in part and denied in part. It is denied that drivers register with UTI. On the contrary, it is averred that UTI licenses an Internet and mobile application software ("App") that connects passengers and drivers in select cities throughout the world. It is admitted that a passenger can use the App to locate the nearest available driver who has registered with a UTI subsidiary, and that the driver is alerted of the passenger's ride request. By alleging that Respondents provide motor carrier service, this paragraph contains conclusions of law to which no response is required.

8. Admitted in part and denied in part. It is admitted that drivers use personal vehicles. It is denied that such individuals are "Uber drivers." Amended Complaint ¶ 8.

9. By alleging that Respondents offer motor carrier passenger service, this paragraph contains conclusions of law to which no response is required.

10. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Code Sections 102 and 2501 speak for themselves. 66 Pa.C.S. §§ 102, 2501.

11. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Section 29.352 of the Commission's regulations speak for themselves. 52 Pa. Code § 29.352.

12. Admitted in part and denied in part. It is admitted that Rasier-PA, a wholly owned subsidiary of UTI, filed applications for experimental authority to operate a shared ride network for passenger trips ("transportation network service") between points in Pennsylvania. It is further admitted that Rasier-PA filed an application for emergency temporary authority to operate a transportation network service between points in Allegheny County. It is denied that these filings were made "[i]n recognition that Respondents' services are regulated by the Commission." Amended Complaint ¶ 12.

13. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Code Section 501(a) speak for themselves. 66 Pa.C.S. § 501(a).

14. The allegations in this paragraph are conclusions of law to which no response is required. The provisions of Code Section 3301 speak for themselves. 66 Pa.C.S. § 3301.

15. The allegations in this paragraph are conclusions of law to which no response is required. The applicable Commonwealth statutes and regulations speak for themselves.

16. Admitted. It is admitted that none of Respondents possessed authority from the Commission to operate transportation network service until August 21, 2014.

17. The allegations in this paragraph are conclusions of law to which no response is required.

18. Admitted in part and denied in part. It is admitted that by letter dated July 6, 2012, the Commission's Bureau of Technical Utility Services ("TUS"), Transportation Division, sent a letter to UTI. The contents of the letter speak for themselves. It is denied that TUS had the authority to direct UTI to cease and desist from licensing its App or to conclude that such licensing constituted activity as a broker of transportation requiring Commission authority.

19. Admitted in part and denied in part. It is specifically denied that a blog announcement is indicative of the actual occurrence of any particular activity.

20. The allegations in this paragraph are conclusions of law to which no response is required.

21. The allegations in this paragraph are conclusions of law to which no response is required.

22. Denied. After reasonable investigation, Rasier-PA is without information or knowledge sufficient to form a belief about the activities of I&E Motor Carrier Enforcement Manager Charles Bowser ("Officer Bowser") with respect to downloading the UTI App, and demands proof thereof, if relevant, at hearing.

23. Denied. After reasonable investigation, Rasier-PA is without information or knowledge sufficient to form a belief about the activities of Officer Bowser with respect to using or supervising the use of the UTI App to request passenger transportation service in the City of Pittsburgh and the Greater Pittsburgh Area on sixteen occasions between March 31, 2014 and July 10, 2014, and demands proof thereof, if relevant, at hearing.

24. The allegations in this paragraph are conclusions of law to which no response is required.

25. Admitted. It is admitted that I&E filed a Formal Complaint against UTI on June 5, 2014. The contents of the Formal Complaint speak for themselves.

26. Admitted. The contents of the Formal Complaint speak for themselves.

27. Admitted. It is admitted that I&E filed a Petition for Interim Emergency Relief on June 16, 2014. The contents of the Petition for Interim Emergency Relief speak for themselves.

28. Admitted. It is admitted that an evidentiary hearing was held on June 26, 2014 on the Petition for Interim Emergency Relief.

29. Admitted. It is admitted that the presiding officers issued an Order on July 1, 2014 addressing the Petition for Interim Emergency Relief. The contents of the July 1, 2014 Order speak for themselves.

30. Admitted in part and denied in part. The contents of the July 1, 2014 Order speak for themselves.

31. Admitted. It is admitted that the Commission adopted an Order on July 24, 2014 addressing the Petition for Interim Emergency Relief. The contents of the July 24, 2014 Order speak for themselves.

32. Admitted. It is admitted that Commissioner James H. Cawley issued a Statement on July 24, 2014 addressing the Petition for Interim Emergency Relief. The contents of the July 24, 2014 Statement speak for themselves.

33. Admitted. It is admitted that a Secretarial Letter was issued on July 28, 2014. The contents of the July 28, 2014 Secretarial Letter speak for themselves.

34. The allegations in this paragraph are conclusions of law to which no response is required. By way of further answer, it is denied that any of the trips alleged in Paragraph 23 of the Amended Complaint occurred after July 24, 2014.

35. The allegations in this paragraph contain conclusions of law to which no response is required. By way of further answer, upon reasonable investigation, Rasier-PA is without information or knowledge sufficient to form a belief as to the capabilities of I&E's enforcement staff, and demands proof, if relevant, at hearing.

36. Admitted in part and denied in part. The contents of the July 28, 2014 Secretarial Letter, the Interim Order on Motion to Compel and Motion for Continuance dated October 3, 2014 and the Interim Order on Motion for Sanctions dated November 26, 2014 speak for themselves.

37. Denied. Upon reasonable investigation, Rasier-PA is without information or knowledge sufficient to form a belief as to importance of a certain element to I&E's prosecution of this complaint. By way of further answer, it is averred that I&E, as the complaint, has the burden of proving the allegations contained in the Amended Complaint. 66 Pa.C.S. § 332(a).

38. Admitted in part and denied in part. The contents of the Interim Orders dated October 3, 2014 and November 26, 2014 speak for themselves.

39. Denied. To the contrary, it is averred that Rasier-PA disclosed the name of the UTI subsidiary that was engaged in transportation network service in Allegheny County prior to August 21, 2014 on the record of the application proceedings at Docket No. A-2014-2416127 and A-2014-2424608, and the transcript of those proceedings is readily available to I&E. It is further averred that Rasier-PA has provided the trip data to the Commission, under seal on a confidential basis, in the same docketed proceedings.

40. Denied. It is denied that I&E is entitled to rely on a responding party to produce information rather than carrying its burden of proof through conducting its own investigation. It is further averred that I&E made the choice to refrain from moving forward with the original Complaint it filed on June 5, 2014.

41. Denied. After reasonable investigation, Rasier-PA is without information or knowledge to form a belief about the reasons that I&E has used "proxy data" as a basis for amending its original Complaint filed on June 5, 2014, and demands proof thereof, if relevant, at hearing. Moreover, the use of "proxy data" represents an unlawful attempt to shift the burden of proof from I&E to Rasier-PA. Under well-established Pennsylvania law, the proponent of an order bears the burden of proof. 66 Pa. C.S. §332(a). To satisfy that burden, the proponent of the order must prove each element of its case by a preponderance of evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, it well-settled that the Commission's decision must be supported by substantial evidence in the record, which requires more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980).

42. Denied. After reasonable investigation, Rasier-PA is without information or knowledge to form a belief as to the derivation of information for the proxy data, and demands proof thereof, if relevant, at hearing. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

43. Denied. After reasonable investigation, Rasier-PA is without information or knowledge to form a belief as to the basis for the proxy data, and demands proof thereof, if relevant, at hearing. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

44. Denied. After reasonable investigation, Rasier-PA is without information or knowledge to form a belief as to the application of a multiplier to the trip data of a competitor, and demands proof thereof, if relevant, at hearing. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

45. After reasonable investigation, Rasier-PA is without information or knowledge to form a belief as to the development of proxy data, and demands proof thereof, if relevant, at hearing. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

46. The allegations in this paragraph contain conclusions of law to which no response is required. Code Sections 1101, 2505(a) and 3301, and Section 5.342 of the Commission's regulations speak for themselves. 66 Pa.C.S. § 1101, 2505(a) and 3301; 52 Pa. Code § 5.342. Additionally, this paragraph contains a request for relief to which no response is required. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

47. This paragraph contains a request for relief to which no response is required. Rasier-PA further incorporates herein by reference its response to the use of proxy data set forth in Paragraph 41.

WHEREFORE, Rasier-PA LLC hereby requests that the Amended Complaint of the Bureau of Investigation and Enforcement be dismissed with prejudice, and that the Commission grant Rasier-PA such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: March 27, 2015

Karen O. Moury BB

Karen O. Moury
Buchanan Ingersoll & Rooney PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4820

Attorneys for Rasier-PA LLC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Jonathan J. Feldman, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Uber Technologies, Inc., *et al.*, to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

March 27, 2015

Jonathan J. Feldman, Manager-Uber Pennsylvania

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

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
mswindler@pa.gov
stwimer@pa.gov
wascott@pa.gov

Mary D. Long
Jeffrey A. Watson
Administrative Law Judges
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, Pennsylvania 15222
malong@pa.gov
jeffwatson@pa.gov

Dated this 27th day of March, 2015.

Karen O. Moury BB

Karen O. Moury, Esq.