



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 17, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the original of the Bureau of Investigation and Enforcement's Application for Subpoena of Jonathan J. Feldman in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please contact me at (717) 783-6369.

Sincerely,

Michael L. Swindler
Prosecutor

Stephanie M. Wimer
Prosecutor

Enclosure

cc: Honorable Mary D. Long
Honorable Jeffrey A. Watson
As per certificate of service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Uber Technologies, Inc., *et al.*
Respondents

Docket No. C-2014-2422723

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §5.421, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission has filed an Application for Subpoena in the above-referenced matter. You are hereby notified that you may file a written response or objection within five (5) days of service of the Application pursuant to Ordering Paragraph 3 of Interim Order On Application For A Subpoena, in the above-docketed matter, dated January 23, 2015, in lieu of the ten (10) day response time pursuant to 52 Pa. Code §5.421(b)(3). An original copy of your response must be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

A copy must also be served on the presiding officers and undersigned counsel.


Michael L. Swindler, Prosecutor
PA Attorney ID No. 43319

Stephanie M. Wimer, Prosecutor
PA Attorney ID No. 207522

Wayne T. Scott, First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Dated: March 17, 2015

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. :
Uber Technologies, Inc., *et al.* :
Respondent :

Docket No. C-2014-2422723

APPLICATION FOR SUBPOENA

AND NOW comes the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) and files this Application for Subpoena, pursuant to 52 Pa. Code § 5.421, to direct Jonathan J. Feldman to appear and testify at the evidentiary hearing to be scheduled in the above-captioned case. In support thereof, I&E avers as follows:

I. INTRODUCTION

1. I&E filed a Formal Complaint against Uber Technologies, Inc. (Uber) on June 5, 2014.
2. I&E promptly commenced formal discovery, sending its First Set of Interrogatories and Requests for Production of Documents on August 8, 2014. The entirety of I&E's discovery requests in this proceeding were objected to by Uber. Consequently, I&E filed two Motions to Compel on August 28 and November 13, 2014, regarding Uber's failure to respond to I&E's Set I and Set II discovery requests,

respectively. Both Motions to Compel were granted and Uber was directed to serve I&E with responses to I&E's discovery. *See* Interim Order on Motion to Compel and Motion for Continuance dated October 3, 2014, and Interim Order on Motion to Compel Set II Interrogatories dated November 25, 2014. Uber ignored these Orders and failed to provide responses to I&E's discovery.

3. On November 7, 2014, I&E filed a Motion for Sanctions due to Uber's refusal to respond to I&E's Set I discovery as directed by the October 3, 2014 Order. In their Interim Order regarding Motion for Sanctions dated November 26, 2014, the presiding Administrative Law Judges (ALJs) provided Uber with one final opportunity to serve any and *all* outstanding discovery responses to I&E.

4. Despite the ALJs' Interim Orders and the imposition of a sanction of a civil penalty in the amount of \$500 per day for each day Uber fails to answer I&E's discovery, Uber continued to refuse to provide any responses.

5. I&E's discovery included requests for information pertaining to "trip data," or the number of transactions or rides provided to passengers in Pennsylvania via the connections made with drivers through the Uber app when Uber lacked authority to facilitate or provide such transportation. In addition to the above-mentioned Interim Orders, the Commission directed Uber to provide this information by Secretarial Letter dated July 28, 2014 docketed at this proceeding.

6. Despite the Secretarial Letter's clear direction, Uber continued to refuse to provide trip data to I&E in this proceeding.

7. On January 9, 2015, I&E filed an Amended Complaint against Uber and all known Uber affiliates conducting business in Pennsylvania (Uber, *et al.*).

8. On January 9, 2015, I&E also filed a Second Motion for Sanctions due to Uber's continued refusal to provide full and complete discovery responses in blatant disregard of prior Commission directives.

9. Due to Uber's defiant refusal to answer I&E's discovery, I&E was required in its Amended Complaint to identify as the proper Respondents to this proceeding several related corporate entities allegedly responsible for or directly or indirectly involved in facilitating and/or providing unauthorized passenger motor carrier service within the Commonwealth of Pennsylvania.

10. Due to Uber's defiant refusal to answer I&E's discovery, I&E was required in the Amended Complaint to update and quantify the violations alleged by including a "per ride" violation component based on "proxy data" representing the number of unauthorized trips.

11. I&E's ability to file a straightforward Amended Complaint that fully encompasses the extent of the unlawful activity committed by Uber, or an affiliate, was not only hampered - but was made utterly impossible – because of Uber's continued, ongoing, intentional defiance of Commission orders and the orders of the presiding ALJs directing Uber to provide information to I&E as properly sought in discovery by I&E for the past eight months.¹

¹ Uber's blatant, ongoing defiance is further described in I&E's Second Motion for Sanctions against Uber, filed on January 9, 2015 at this docket.

12. In order to offset, to the best of I&E's ability, the lack of information to which I&E is entitled under the discovery rules of this Commission's regulations, but to which I&E has been summarily denied by the blatant, unlawful acts of Respondents, I&E was forced to: (1) resort to the use of "proxy data" as set forth in the Amended Complaint; and (2) name all known Uber affiliates in Pennsylvania as Respondents to this proceeding.

13. Uber finally provided partial discovery responses on March 6, 2015. Uber failed however to provide "full and complete" responses, as previously directed, including the continued refusal to provide trip data to I&E in this proceeding, among other things.

II. GROUNDS FOR THE SUBPOENA

14. Section 5.421(a)(2) of the Commission's regulations permits a party to submit a written application for a subpoena to the presiding officer. 52 Pa. Code § 5.421(a)(2). The application for a subpoena must specify the general relevance, materiality and scope of the testimony or documentary evidence sought, including specification of the documents desired. 52 Pa. Code § 5.421(b)(1).

15. Jonathan J. Feldman has been identified as the General Manager of Uber Pennsylvania.

16. On January 9, 2015, I&E filed an Application for a subpoena to secure the attendance of Travis Kalanick, CEO of Uber Technologies, Inc., to testify at the evidentiary hearing then scheduled in the above-captioned complaint proceeding.

17. On January 21, 2015, Uber filed an objection to I&E's Application for Subpoena of Travis Kalanick. The basis of the objection was that Uber designated Jonathan J. Feldman, the General Manager of Uber Pennsylvania, as the individual with knowledge of the matters raised by I&E.

18. By Interim Order On Application For Subpoena dated January 23, 2015, I&E's Application for Subpoena of Travis Kalanick was denied. The Order noted that I&E "is granted leave to file an application to subpoena Jonathan J. Feldman to testify, should it wish to do so." Interim Order dated January 23, 2015, Ordering Paragraph 2.

19. Upon information and belief, and based on representations made by Uber in its Objection to Application for Subpoena of Travis Kalanick dated January 21, 2015, Jonathan J. Feldman knows and/or has the ability to discover the number of trips furnished through the Uber app from the initiation of service in the Commonwealth of Pennsylvania until the time that Rasier-PA LLC received emergency temporary operating authority from the Commission.

20. Upon information and belief, and based on representations made by Uber in its Objection to Application for Subpoena of Travis Kalanick dated January 21, 2015, Jonathan J. Feldman has information discerning the business relationships of and between the various affiliates under the Uber Technologies, Inc. corporate umbrella and their respective roles in operating passenger transportation service in the Commonwealth.

21. Upon information and belief, and based on representations made by Uber in its Objection to Application for Subpoena of Travis Kalanick dated January 21, 2015,

Jonathan J. Feldman knows and/or has the ability to discover the date Uber, or an affiliate, initiated passenger transportation service in the Commonwealth of Pennsylvania.

22. Upon information and belief, and based on representations made by Uber in its Objection to Application for Subpoena of Travis Kalanick dated January 21, 2015, Jonathan J. Feldman is the individual with knowledge of the matters raised by I&E.

23. Because of Uber's failure to comply with the rules of discovery, the orders of the presiding ALJs and the Commission's Secretarial Letter, its actions have deprived I&E of its right to due process and have prevented fair litigation. Therefore, the testimony of Jonathan J. Feldman is essential to the topics referenced above. Further, his testimony is material to the resolution of this case, which pertains to Uber's, or an affiliate's, unauthorized passenger transportation in the Commonwealth of Pennsylvania.

24. A proposed subpoena of Mr. Feldman has been included with this Application.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the presiding Administrative Law Judges issue a Subpoena requiring Jonathan J. Feldman to attend the evidentiary hearing in this matter, the scheduling of which has yet to be determined.

Respectfully submitted,



Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: March 17, 2015

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:
Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement
v.
Uber Technologies, Inc., *et al.*

Docket No. C-2014-2422723

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SUBPOENA

To: Jonathan J. Feldman, General Manager – Uber Pennsylvania c/o Rasier-PA LLC,
109 South 13th Street, Unit 2S, Philadelphia, PA 19107

Pursuant to the authority of this Commission under §§309, 331(d)(2) and 333(j) of the Public Utility Code:

1. YOU ARE ORDERED by the Commission to come to a Hearing Room on the

Second Floor of Piatt Place, Suite 220, 301 Fifth Avenue, at Pittsburgh
(place)

Pennsylvania, on [to be determined], at [to be determined] o'clock, in the above case,
(date)

to testify on behalf of the Bureau of Investigation and Enforcement (I&E) and to remain until excused;

2. And bring with you and produce the following: Full and complete responses to all information requested in I&E's Interrogatories and Requests for Production of Documents, Sets I and II that was not provided to I&E in the partial discovery responses served on March 6, 2015.

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance, notice, service and witness fees).

BY THE COMMISSION

Date _____

Mary D. Long
Administrative Law Judge

Jeffrey A. Watson
Administrative Law Judge

Commonwealth of Pennsylvania)
) SS:
County of)

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared _____
who, being duly sworn according to law, deposes and says that he/she served a true and correct
copy of the within SUBPOENA upon _____
by handing the same to him/her at _____ on the
_____ day of _____, 2015 at _____ a.m./p.m.

(Signature)

Sworn to and subscribed before me
this _____ day of _____, 2015

Notary Public

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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 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

Karen O. Moury, Esq.
Buchanan, Ingersoll and Rooney, P.C.
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
karen.moury@bipc.com



Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

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