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December 1, 2014

**VIA E-FILING**

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

Re: BM Enterprises Inc., t/a A & G Taxi v. Uber Technologies, Inc.  
Docket No. C-2014-2452316

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Preliminary Objections of Uber Technologies, Inc. to the Formal Complaint of BM Enterprises Inc., t/a A & G Taxi in the above-captioned matter.

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

Very truly yours,



Karen O. Moury

KOM/tlg  
Enclosure

cc: Chief Administrative Law Judge Charles E. Rainey, Jr. (*via First-Class Mail*)  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**BM ENTERPRISES INC., T/A A & G TAXI** :  
 :  
 v. : **Docket No. C-2014-2452316**  
 :  
**UBER TECHNOLOGIES, INC.** :

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**NOTICE TO PLEAD**

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TO: BM Enterprises Inc., t/a A & G Taxi  
1167 Newport News Drive  
Bensalem, PA 19020

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Uber Technologies, Inc. to the Formal Complaint of BM Enterprises Inc., t/a A & G Taxi within **ten (10) days** from service of this Notice, the facts set forth by Uber Technologies, Inc. in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, 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  
Buchanan Ingersoll & Rooney, PC  
409 North Second Street  
Suite 500  
Harrisburg, PA 17101

Dated: December 1, 2014



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>BM ENTERPRISES INC., T/A A &amp; G TAXI</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2014-2452316</b>
	:	
<b>UBER TECHNOLOGIES, INC.</b>	:	

**PRELIMINARY OBJECTIONS OF UBER TECHNOLOGIES, INC.  
TO THE COMPLAINT OF BM ENTERPRISES INC., T/A A & G TAXI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Uber Technologies, Inc. (“UTI”), by and through its counsel, Karen O. Moury of Buchanan Ingersoll & Rooney PC, files these Preliminary Objections pursuant to Section 5.101 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.101, seeking to dismiss the Formal Complaint (“Complaint”) filed by BM Enterprises Inc., t/a A & G Taxi (“Complainant”), and in support thereof, avers as follows:

**I. Introduction and Background**

1. On November 5, 2014, the Complainant filed a Complaint against UTI, alleging that it is operating illegally in Pennsylvania as a common carrier or broker. The Complaint was served on UTI on November 10, 2014. On December 1, 2014, UTI filed a timely Answer to the Complaint, denying the allegations.

2. UTI moves for dismissal of the Complaint in its entirety on the grounds that: (a) the Complainant lacks standing since it is not a customer of a public utility and has not alleged any foundation to complain as a public utility concerned about the subject matter of the Complaint; (b) the Commission lacks subject matter jurisdiction to hear a complaint regarding activities of a software company, which is not a public utility or engaged in operations that fall

within the definition of public utility or to grant the relief that is requested by the Complaint; (c) the Complaint contains insufficient specificity to permit UTI to formulate responses to the allegations; and (d) the Complaint contains impertinent matter consisting of expressions of opinion and legal arguments. Moreover, the Complaint improperly attaches letters sent to the Pennsylvania General Assembly by a different entity regarding pending legislative bills, which should be stricken, as they do not constitute a proper pleading under the Commission's regulations at 52 Pa. Code § 5.22(a).

3. The Complaint is nothing more than a packet of propaganda designed to attack ridesharing and transportation network services, which the Commission has endorsed, and to influence the development of policies that are applicable to those services. The real purpose of the Complaint is for the taxicab industry in Philadelphia and surrounding counties to maintain a monopoly that is not serving the public interest. For example, in October 2014, First Keystone Risk Retention Group, a major insurer of the taxicab industry in Pennsylvania, suffered a complete financial collapse and its insurance policies were terminated, which resulted in a critical public safety issue and created an immediate need for adequately insured transportation services in Philadelphia and the surrounding counties. Given the instability of the taxicab industry and the compelling need for reliable, safe and affordable transportation alternatives, no legitimate purposes would be served by holding hearings on the Complaint, and it must be dismissed for the reasons more fully explained below. 66 Pa.C.S. § 703(b).

## **II. Legal Standards Applicable to Preliminary Objections**

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation*

*Intervenors v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

5. The grounds for preliminary objections are set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

6. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors*, supra.

7. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa.Cmwlth. 2007).

### III. Argument

#### A. Preliminary Objection No. 1: Complainant Lacks Standing

8. Under well-established Pennsylvania law, a party does not have standing to participate in a legal proceeding absent a showing that it is aggrieved. A party that is not adversely affected by the matter it seeks to challenge has no standing to obtain a judicial resolution. It is not sufficient for the person claiming to be aggrieved to assert the common interest of all citizens in procuring obedience to the law. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). Therefore, the Complaint should be dismissed pursuant to Section 5.101(a)(7) of the Commission's regulations, 52 Pa. Code § 5.101(a)(7).

9. Standing to participate in proceedings before an administrative agency is primarily with the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (July 9, 1998). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

10. In order to bring a complaint before the Commission, the Complainant must first demonstrate that it has standing to maintain the action. *Nye v. Erie Exchange*, 470 A.2d 98 (Pa. 1983). For its interest to be direct, immediate and substantial, the Complainant must show: (a) that it is adversely affected by the actions challenged in the Complaint; (b) that there is a close causal nexus between its asserted injury and the actions challenged in the Complaint; and (c) that it has a discernible interest other than the general interest of all citizens in seeking compliance with the law. *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996); *In re El Rancho Grande, Inc.*, 437 A.2d 1150 (Pa. 1981); *Empire Coal Mining & Development, Inc. v. Department of Environmental Resources*, 623 A.2d 897 (Pa. Cmwlth. 1993). Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. *Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board*, 467 A.2d 311 (Pa. 1983).

11. The Complaint contains no allegations to demonstrate that the Complainant's interest in the subject matter is direct. The Complaint neither alleges that it is a customer of UTI nor that it is a public utility concerned about the subject matter of the Complaint, as required by Section 701 of the Public Utility Code, 66 Pa.C.S. § 701 ("Code"). Although the Complainant alleges that UTI is operating to the detriment of common carriers, it does not allege that it is a common carrier or provide any explanation of a direct economic interest. *See Blue & White Lines, Inc. v. Waddington, t/d/b/a Waddington Tours*, 1995 WL 945180 (Pa. PUC), Docket No. A-00108279C9301 (Order entered February 13, 1995) (while a certificated carrier may have standing to file a complaint about a subject matter in which it has an interest, it must have a valid certificate to render the service at issue and have a direct economic interest in the service provided). Here, not only does the Complainant fail to make any allegations to support its

standing to file the Complaint, it clearly does not hold Commission authority to render ridesharing or transportation network services, which are the subject of the Complaint.

12. Further, the Complainant's interest is not immediate because it has not alleged any injury as a result of the actions challenged in the Complaint. Specifically, other than a general allegation about the effect of ridesharing or transportation network services on common carriers, the Complaint contains no averments of any immediate effect on the Complainant's interests.

13. In addition, the Complainant's interest is not substantial because it has alleged no discernible interest other than the general interest of all citizens in seeking compliance with the law.

14. Therefore, the Complainant lacks standing to maintain the action, and the Complaint should be dismissed on the basis of the lack of standing of the Complainant, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(a)(7).

**B. Preliminary Objection No. 2: Commission Lacks Subject Matter Jurisdiction Over Activities Of Software Company Or To Grant Requested Relief**

15. Under Code Section 701, 66 Pa.C.S. § 701 the Commission may only hear complaints about a violation of any law which the Commission has jurisdiction to administer. *See also* 52 Pa. Code § 5.21(a). The Commission's regulations at 52 Pa. Code § 5.101(a)(1) permit the filing of a preliminary objection challenging the Commission's subject matter jurisdiction, and the regulations at 52 Pa. Code § 5.21(d) authorize the Commission to dismiss a complaint if a hearing is not necessary. Because the Commission does not have jurisdiction over the subject matter of the Complaint, and the Complaint is legally insufficient because the Commission may not grant the requested relief, it should be dismissed pursuant to Section 5.101(a)(1) and (4) of the Commission's regulations, 52 Pa. Code § 5.101(a)(1) and (4)..

16. If the averments of the Complaint, as gleaned from a review of the attachments, are accepted as true, rides have been arranged between points in Pennsylvania through the Internet, digital software or mobile application (“App”) of UTI. However, the Commission does not have jurisdiction over the licensing of software by a software company. Nothing in the Complaint suggests or avers that the licensing of software constitutes service as a common carrier as defined by Code Section 102, 66 Pa.C.S. § 102, or as a broker defined by Code Section 2501(b), 66 Pa.C.S. §2501(b).

17. Further, the relief requested by the Complaint is beyond the statutory authority of the Commission to grant. In particular, the Commission does not have jurisdiction to direct a software company to cease the licensing of its software. Nor does the Commission have statutory authority to impound vehicles, to direct UTI to issue refunds to any riders or to enact legislation regarding ridesharing or transportation network services.

18. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967) (“*Roberts*”). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

19. Nothing in the Code authorizes the Commission to direct a software company to cease the licensing of software. The Code definition of “common carrier” involves the

transportation of persons between points in Pennsylvania, while the Code definition of “broker” entails arranging the transportation of persons between points in Pennsylvania. 66 Pa.C.S. §§ 102 and 2501. The Complaint does not allege the transportation of persons or the arranging of transportation, but rather refers only to use of the UTI App. Absent allegations in the Complaint that UTI is engaged in activities of a common carrier or broker, as defined by the Code, no statutory basis exists upon which the Commission may direct UTI to stop licensing its software.

20. Moreover, the Commission’s statutory authority to address unlawful activities under the Code does not include the ability to impound vehicles. Code Chapter 33 sets forth the violations and penalties that are within the Commission’s power to impose. 66 Pa.C.S. Ch. 33. Code Section 3301(a) permits the Commission to impose civil penalties of up to \$1,000 for violations of the Code, regulations or Commission orders. No section within Chapter 33 permits the impoundment of vehicles.

21. Further, the Commission’s statutory authority to direct the issuance of refunds to customers does not apply to the circumstances alleged in the Complaint. The Commission’s refund authority is limited to Code Section 1312, under which it may direct the issuance of refunds if, in any proceeding involving rates, it determines that any rate received by a public utility was unjust or unreasonable, in violation of any regulation or order of the Commission or in excess of the applicable rate contained in an existing and effective tariff. As UTI is not a “public utility” or engaged in activities that fall within the definition of “public utility,” and this Complaint proceeding does not involve the establishment of rates, Code Section 1312 provides no authority for the Commission to direct the issuance of refunds. 66 Pa.C.S. § 1312.

22. Therefore, the Complaint should be dismissed due to the Commission's lack of jurisdiction over the subject matter and the legal insufficiency of the Complaint in that it requests relief which is not within the purview of the Commission to grant.

C. **Preliminary Objection No. 3: The Complaint Lacks Sufficient Specificity To Permit Responses And Contains Impertinent Matter.**

23. Section 5.101(a)(3) of the Commission's regulations provides that a complaint should be dismissed if it contains insufficient specificity to permit a response, and Section 5.101(a)(2) of the regulations provides that a complaint should be dismissed if it fails to conform to the requirements of Chapter 5 or if it includes impertinent matter. 52 Pa. Code § 5.101(a)(2) and (3).

24. The Complaint contains only general allegations of "operating illegally" (Complaint, ¶ 4), without setting forth any specific averments of activities that may constitute providing service as a common carrier or broker as defined by the Code. Other than attaching three undated, unidentified screen shots and a receipt, the Complaint contains no allegations of specific instances in which UTI provided unauthorized common carrier or broker service. Absent specific allegations of transportation services provided or arranged by UTI, it is impossible to respond to the Complaint, and it should be dismissed pursuant to Section 5.101(a)(3) of the Commission's regulations, 52 Pa. Code § 5.101(a)(3).

25. Additionally, the Complaint is replete with expressions of opinion and argumentative allegations. The Complaint is nothing more than a packet of propaganda attacking ridesharing or transportation network services, which have been endorsed by the Commission. *See Application of Rasier-PA LLC*, Docket No. A-2014-2424608 (Motion adopted November 13, 2014). By attaching letters sent to the General Assembly by a different entity, the Complaint seeks to affect the development of legislative policy addressing the provision of

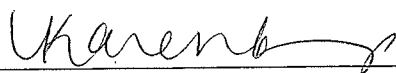
ridesharing or transportation network services. As these letters contain impertinent matter, which may not be considered by the Commission in adjudicating the Complaint, they should be stricken from the Complaint consistent with Section 5.101(a)(2) of the Commission's regulations. 52 Pa. Code § 5.101(a)(2).

26. Moreover, the attachments to the Complaint, particularly the letters to the General Assembly, do not conform to the requirements of the Commission's regulations in Chapter 5 and should be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations. 52 Pa. Code § 5.101(a)(2). Section 5.22(a) sets forth the requirements for formal complaints, including a clear and concise statement of the act being complained of, and these attachments do not comply with those requirements. 52 Pa. Code § 5.22(a).

WHEREFORE, Uber Technologies, Inc. hereby requests that these Preliminary Complaints be granted, that the Complaint filed by BM Enterprises Inc., t/a A & G Taxi be dismissed with prejudice, and that the Commission grant UTI such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: December 1, 2014

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

*Attorneys for Uber Technologies, Inc.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>BM ENTERPRISES INC., T/A A &amp; G TAXI</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2014-2452316</b>
	:	
<b>UBER TECHNOLOGIES, INC.</b>	:	

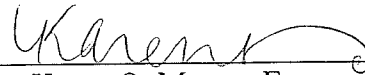
CERTIFICATE OF SERVICE

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 First-Class Mail**

BM Enterprises Inc., t/a A & G Taxi  
1167 Newport News Drive  
Bensalem, PA 19020

Dated this 1<sup>st</sup> day of December, 2014.

  
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Karen O. Moury, Esq.