

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BM ENTERPRISES, INC., t/a	:	
A & G TAXI	:	
	:	C-2014-2452316
	:	
UBER TECHNOLOGIES, INC.	:	

AMENDED COMPLAINT

Complainant, BM Enterprises, Inc., t/a A & G Taxi, by and through its attorneys, Salaman, Grayson, & Henry, P.C., hereby requests this Honorable Commission to sustain the following amended complaint based upon the following facts:

I. PARTIES

1. Complainant, B.M. Enterprises, Inc., t/a A.G. Taxi, is a Pennsylvania corporation and a public utility that holds a certificate of public convenience issued by the Commission, under docket number A-00121368, authorizing it “to transport, as a common carrier, persons, upon call or demand, in the borough of Bristol and the townships of Bristol and Bensalem, all located in Bucks County” and under docket number A-00121368, F.1, Am-A, “to transport as a common carrier, by motor vehicle, persons, upon call or demand, in the township of Solebury, and the borough of New Hope, and that portion of Buck County located south and east of Pa.

Rout 232; and that portion of Montgomery County located north and west of Pa. Route 73.” A true and correct copy of the Commission order granting Complainant’s rights is attached hereto and marked as Exhibit A.

2. Respondent, Uber Technologies, Inc. (“Uber”), is a Delaware corporation engaged in business in Pennsylvania, with a place of business located at 1455 Market Street, 4th Floor, San Francisco, California and an office in Pennsylvania located at 109 S. 13th Street, Suite 2S, Philadelphia, Pennsylvania.

II. STANDING

3. Complainant has standing to file the instant complaint because the Respondent is facilitating the provision of illegal call or demand service in Complainant’s designated territory, using private individuals without certificates of public convenience and such service is in actual, or potential, conflict with Complainant’s Commission-issued call or demand authority in its designated territory.

Count I

4. Complainant hereby incorporates the preceding paragraphs by reference as if fully set forth herein at length.

5. Respondent Uber is the developer of a technology platform that includes, *inter alia*, the Uber app and a website (the “Uber website”), which

enables members of the riding public to order a ride with the touch of a button.

6. Rides ordered through Uber's technology platform are dispatched to third parties, including independent third party transportation providers, under agreements with Respondent Uber or Uber's subsidiaries, including Gegen, LLC ("Gegen") and Rasier, LLC ("Raiser").

7. Before they can use the Uber technology platform, members of the riding public have to create an account by supplying their name, mobile telephone number, email, language preference, and billing information to Respondent Uber on the Uber website, which they may access on any computing device.

8. A valid credit card is required to use the Uber technology platform.

9. In order to sign up to use the Uber technology platform, members of the riding public must agree to the Uber privacy policy and certain terms and conditions that govern the use of the "applications, websites, content, products, and services" made available by Respondent Uber and its subsidiaries.

10. Once an account is created, a member of the riding public may download the Uber app for free and install it on a smartphone device.

11. Once installed, a member of the riding public may log onto the Uber technology platform and order a ride from one of the Uber services using the Uber app or the Uber website.

12. The Uber technology platform offers four services (the “Uber services”), in Complainant’s designated territory: UberX, UberFamily, Black Car, and SUV.

13. UberX is Uber’s low-cost alternative service for up to four passengers.

14. An Uber subsidiary, Raiser, LLC, arranges UberX service under agreement with independent third party providers.

15. Neither Respondent Uber nor Raiser provides UberX service directly and neither owns any vehicles that are used to provide UberX service.

16. As noted, neither Respondent Uber nor Raiser has authorization to provide taxicab service in Complainant’s designated territory.

17. Raiser arranges UberX service by agreement with private individuals, wherein the private individuals agree to accept ride orders for UberX service using Uber’s technology platform and provide the transportation in their own private passenger vehicles in exchange for a share of the fare.

18. None of the private drivers who provide UberX service are authorized by the Commission to provide taxicab service in Complainant's designated territory.

19. Uber Family is UberX service with a \$10 surcharge for child car seats provided by the driver.

20. Raiser arranges UberFamily service in the same way that it arranges UberX service.

21. None of the private drivers who provide UberFamily service is authorized by the Commission to provide taxicab service in Complainant's designated territory.

22. Black Car is Respondent Uber's original service, which is luxury sedan service for up to four passengers.

23. An Uber subsidiary, Gegen, arranges Black Car service under agreement with independent third party providers.

24. Neither Respondent Uber nor Gegen provides Black Car service directly and neither owns any vehicles.

25. Gegen also has a PUC license to act as a broker of motor carrier service in Pennsylvania, including Complainant's designated territory, but the broker license does not authorize Gegen to arrange the provision of

taxicab service by an individual or an entity that is not authorized to provide taxicab service in Complainant's designated territory.

26. Gegen arranges Black Car service by entering into agreements with independent drivers, who agree to accept ride orders for Black Car service using the Uber technology platform and provide Black Car service in exchange for a share of the fare.

27. None of the independent drivers with whom Gegen contracts have authorization to provide taxicab service in Complainant's designated territory.

28. Gegen arranges Black Car service using two types of agreements.

29. Gegen enters into agreements with independent drivers who have authorization to provide limousine service in Complainant's designated territory, or who drive for another company that has authorization to provide limousine service in Complainant's designated territory, wherein the independent driver agrees to accept ride orders for Black Car, dispatched through the Uber technology platform, and to provide the transportation in exchange for a share of the fare.

30. Second, Gegen enters into agreements with independent drivers who own their own luxury sedans, but do not have authorization to provide

limousine service in Complainant's designated territory, wherein Gegen agrees to register the independent driver's vehicle with the Pennsylvania Department of Motor Vehicles ("PennDOT") in its own name, and the independent driver agrees to lease back his or her own vehicle from Gegen, accept ride orders for Black Car, dispatched through the Uber technology platform and to provide the transportation in exchange for a share of the fare.

31. SUV service is a premium service for up to six passengers, which is significantly more expensive than Black Car.

32. Gegen arranges SUV service in the same way that it arranges Black Car Service.

33. None of the private drivers that provide SUV service are authorized by the Commission to provide taxicab service in Complainant's designated territory.

34. Once the vehicle type is selected, the pick-up location must be set and confirmed and the ride order is complete.

35. Once ride order is confirmed, the nearest available Uber driver, who is logged onto the Uber technology platform via the internet using a smartphone device, is located using a Global Positioning System ("GPS") and the ride order is dispatched to that driver.

36. Once an Uber driver accepts the ride order, the Uber driver's telephone number is transmitted to the Uber app user, along with an estimated time of arrival.

37. Once the Uber app user is picked up, the Uber Driver activates a meter to calculate the fare by pressing an icon on his smartphone device.

38. Fares are calculated using rates based on a combination of the length and duration of the trip.

39. Rates increase during periods of high demand, such as before or after a sporting event, and during emergencies, such as during a hostage crisis or a snow storm ("surge pricing").

40. At the conclusion of the trip, payments are handled automatically by the Uber service through the credit card on file with the account.

41. Respondent Uber is not authorized by the Commission to provide any type of transportation or brokerage service in Pennsylvania, yet it is facilitating or brokering such service for compensation using the Uber technology platform in violation of the Public Utility Code and the Commission's regulations.

WHEREFORE, Complainant hereby requests the Commission to sustain its Complaint and to order Respondent Uber to cease and desist from further violations.

COUNT II

42. Complainant hereby incorporates the preceding paragraphs by reference as if the same were fully set forth herein at length.

43. The Commission granted authorization to another Raiser-PA, another Uber subsidiary to provide experimental service on a statewide basis, including in Complainant's designated territory.

44. Respondent Uber was facilitating or brokering service in Complainant's designated territory before approval of Raiser-PA's application was granted by the Commission.

45. Notwithstanding the Commission's approval of experimental rights for Raiser-PA, Respondent Uber's facilitation or brokering of experimental service provided by Raiser-PA likewise violates the Public Utility Code and the Authority's regulations because the service being facilitated or brokered is not "motor carrier" service within the meaning of the Public Utility Code.

46. The Public Utility Code defines the term "common carrier" as follows:

Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, **but shall not include** contract carriers by motor vehicles, or **brokers**, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

66 Pa. C.S. §102 (emphasis added).

47. The Public Utility Code defines the term “motor carrier” as “[a] common carrier by motor vehicle, and a contract carrier by motor vehicle.”

66 Pa. C.S. §102.

48. The Public Utility Code defines the term “broker” as follows:

Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. §2501

49. Based on the foregoing, the service that Rasier-PA provides and Respondent Uber facilitates is not “motor carrier” service within the meaning of 66 Pa. C.S. §102, it is brokerage service.

50. Furthermore, the service violates Commission regulations, which prohibit a broker to “employ or engage a carrier who or which is unable to lawfully provide the transportation under his contracts, agreements, or arrangements therefor.” 52 Pa. Code §39.5 (pertaining to carrier’s operating authority).

51. In other words, a broker cannot procure transportation services from a motor carrier that does not have a certificate of public convenience authorizing the type of transportation that is being requested.

52. Accordingly, both Rasier-PA and Respondent Uber are violating the Public Utility Code and the Commission’s regulations by providing, facilitating and brokering such service.

WHEREFORE, Complainant hereby requests the Commission to sustain its Complaint and to order Respondent Uber to cease and desist from further violations.

COUNT III

53. Complainant hereby incorporates the preceding paragraphs by reference as if the same were fully set forth herein at length.

54. The Ridesharing Arrangement Act, 55 P.S. §§ 695.1 through 695.9, defines the term “ridesharing arrangement” as follows:

As used in this act, "RIDESHARING ARRANGEMENT" shall mean any one of the following forms of transportation:

- (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver *who is not engaged in transportation as a business*. The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
- (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
- (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

55. Individuals or entities that provide transportation services under a ridesharing arrangement are not subject to motor carrier laws and are not considered commercial vehicles. 66 P.S. §695.2 and §695.99.

56. But a transportation provider that receives compensation for its services is no longer doing so pursuant to a “ridesharing arrangement” and must first obtain a certificate of public convenience prior to beginning service. 66 Pa. C.S.. §1101.

57. Accordingly, Respondent Uber is violating the Public Utility Code and the Commission’s regulations by violating the Ridesharing

Arrangement Act and facilitating commercial transportation services pursuant to ridesharing arrangements that will be provided by individuals or entities that do not possess certificates of public convenience.

WHEREFORE, Complainant hereby requests the Commission to sustain its Complaint and to order Respondent Uber to cease and desist from further violations.

Respectfully submitted,

Michael S. Henry

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February 20, 2015

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I served a copy of the foregoing Amended Complaint on the following in accordance with the regulations of the Commission or in a manner agreed upon by the recipient in advance:

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Michael S. Henry

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Date: February 20, 2015

VERIFICATION

MICHAEL S. HENRY, ESQUIRE verifies that he is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Michael S. Henry

Michael S. Henry

Dated: February 20, 2015