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March 16, 2015

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 Amended 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/bb
Enclosure
cc: 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. :

**PRELIMINARY OBJECTIONS OF UBER TECHNOLOGIES, INC.
TO AMENDED 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 Amended 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. UTI moves for dismissal of the Amended Complaint in its entirety on the grounds that the Complainant has failed to set forth the requisite legal standing to complain about the licensing by UTI of its Internet and mobile application (“App”) to enable its subsidiaries, Rasier-PA LLC (“Rasier-PA”) and Gegen LLC (“Gegen”) to perform transportation network company services and brokerage services, respectively, pursuant to authority granted by the Commission. The Amended Complaint is nothing more than a thinly-veiled and improper attempt to seek reconsideration of the Commission’s Order entered on December 5, 2014¹ and January 24,

¹ *Application of Rasier-PA LLC for Experimental Authority to Operate Shared-Ride Network Service Between Points in Allegheny County Excluding Designated Counties*, Docket No. A-2014-2424608 (Order entered December 5, 2014). (“December 5, 2014 Order”).

2013,² granting Rasier-PA and Gegen authority to engage in transportation network services and brokerage services, respectively. As such, it is an abuse of the Commission's complaint process which is designed to allow consumers and entities with proper legal standing to raise legitimate issues about matters within the Commission's jurisdiction. 66 Pa.C.S. § 701.

2. While the Amended Complaint corrects one deficiency of the original Complaint, which failed to even describe Commission authority held by the Complainant that may be affected by the licensing of the App, it continues to fail to allege that it provides transportation network services or brokerage services. Moreover, it fails to allege any specific harm arising from the licensing of the App by UTI to Rasier-PA and Gegen for the purpose of engaging in Commission-authorized operations. To the contrary, the Amended Complaint simply relies on a bald assertion of the nature that is typically raised in a protest to an application and claims that the services described in the Amended Complaint are "in actual, or potential, conflict with Complainant's Commission-issued call or demand authority in its designated territory." Amended Complaint. ¶3.

3. On November 5, 2014, the Complainant originally 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.

4. Also on December 1, 2014, UTI filed Preliminary Objections to the Complaint. By Interim Order issued on February 11, 2015 ("*February 11 Interim Order*"), Administrative Law Judges Long and Watson granted UTI's Preliminary Objections to the extent the Complaint sought redress of fares charged to transportation customers. As to UTI's Preliminary Objection

² *Application of Gegen LLC for Brokerage License*, Docket No. A-2012-2317300 (Order entered January 24, 2013).

based on standing, the *February 11 Interim Order* directed the Complainant to file an Amended Complaint setting forth facts supporting its standing to lodge a complaint and specific allegations of harm caused by UTI. The Amended Complaint was due within 10 days of entry of the Interim Order.

5. On February 20, 2015, the Complainant filed the Amended Complaint, which is now pending before the Commission. The Amended Complaint was served on UTI on February 23, 2015. Responsive pleadings are due on March 16, 2015.

6. As more fully explained below, the Amended Complaint must be dismissed for the failure of the Complainant to demonstrate the requisite legal standing to pursue claims regarding UTI's licensing of the App to Rasier-PA and Gegen to provide Commission-authorized operations. 52 Pa. Code § 5.101(7). No legitimate purposes would be served by holding hearings on the Amended Complaint. 66 Pa.C.S. § 703(b).

II. Legal Standards Applicable to Preliminary Objections

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

8. 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.

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

10. 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.Cmwth. 2007).

III. Preliminary Objection: Complainant Lacks Standing

11. 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).

12. 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).

13. 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).

14. The Amended Complaint contains no allegations to demonstrate that the Complainant's interest in the subject matter is direct. Although the Amended Complaint alleges that the Complainant holds Commission authority to transport persons in call or demand service in portions of Bucks County, Pennsylvania, it does not allege that it holds a valid certificate to provide the services at issue and further does not provide any explanation of a direct economic interest. In *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), the Commission found that a certificated carrier may have standing to file a complaint about unauthorized operations, it must have authority to render the service at issue and demonstrate that it has a direct economic interest. The complainant in *Blue and White* demonstrated a very real commercial interest by showing that a bid for a charter trip was lost to the respondent, while the Complainant here rests on the fact that it has call or demand authority in the same area where UTI's subsidiaries are providing Commission-authorized services.

15. Further, the Complainant's interest is not immediate because it has not alleged any injury or specific harm as a result of the actions challenged in the Complaint. The *February 10 Interim Order* expressly directed the Complainant to set forth "specific allegations of harm allegedly caused by" UTI. *February 10 Interim Order*, Ordering Paragraph 2. Instead of setting forth specific allegations of harm, the Amended Complaint sets forth one sentence claiming that the services that are the subject of the Amended Complaint are "in actual, or potential conflict, with Complainant's Commission-issued call or demand authority in its designated territory." Amended Complaint, ¶3. This is general language that is typically used by existing carriers in protesting applications filed by new entrants. It is certainly not a sufficient basis upon which to pursue claims against UTI for licensing its App to Rasier-PA and Gegen in connection with Commission-authorized operations. See *Blue & White Lines, supra*.

16. In addition, the Complainant's interest is not substantial. Particularly in view of the Commission-authorized operations of Rasier-PA and Gegen for which the App is being used, no legitimate purpose would be served by holding hearings on the allegations in the Amended Complaint. Moreover, the Commission has already dismissed the legal arguments raised by the Amended Complaint concerning the definitions of "motor carrier," "common carrier," and "broker" in the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and rejected arguments concerning applicability of the Ridesharing Arrangement Act, 55 P.S. §§ 695.1-659.9. *See December 5, 2014 Order.*

17. Therefore, the Complainant lacks standing to maintain the action, and the Amended Complaint must 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).

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: March 16, 2015



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Attorneys for Uber Technologies, Inc.

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	:	
v.	:	Docket No. C-2014-2452316
	:	
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 E-Mail and First-Class Mail

Administrative Law Judge Mary D. Long
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Michael S. Henry, Esquire
Michael S. Henry LLC
100 South Broad Street Ste 650
Philadelphia Pa 19110-1030
Representing BM Enterprises, Inc. t/a A & G Taxi
mshenry@mshenrylaw.com

Dated this 16th day of March, 2015.



Karen O. Moury, Esq.