

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

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

**Public Meeting April 6, 2017  
2569511-LAW**

**v.**

**Docket No. B-2016-2569511**

**Pennsylvania Public Utility Commission**

**STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission is a proposed Settlement Agreement that would resolve a Petition for Review filed with the Commonwealth Court in response to the Commission's Orders of May 10, 2016 and September 1, 2016. In these Orders, the Commission imposed a civil penalty of approximately \$11.4 million for the unauthorized provision of passenger transportation service, and later, denied reconsideration of this Order on the merits.

While, in principle, I support a reasonable settlement of this matter, I believe that the proposed settlement figure of \$3.5 million is too low. The Commission's Bureau of Investigation and Enforcement conclusively demonstrated that the Petitioners committed a record number of violations of the Public Utility Code. While the resulting civil penalty was also a record for this agency, it was appropriate given the sheer quantity of the violations, approximately 123,000, and the Petitioners unwavering propensity to operate illegally, in spite of all official warnings given, and all official actions taken by the Commission to obtain a cessation of these activities. Even at this late date, the Petitioners continue to maintain that the Commission had no authority to enforce the Cease and Desist Orders it issued in response to the provision of unauthorized service.

In its Petition for Review, the Petitioners largely rely on the same arguments already raised before the Commission. The Petitioners' new, primary argument is that the Pennsylvania General Assembly, in passing Act 164 of 2016, created a statutory cap of \$250,000 for civil penalties imposed for the provision of unauthorized transportation network service. The Petitioners argued that this provision applied to this matter, and have asserted that their liability is therefore something less than \$250,000. However, the Commission was prepared to argue that this provision was not intended to apply to this case. This argument would have been supported by multiple on the record statements from the Legislative Journal by members of the General Assembly active in the passage of this bill. Additionally, the Commission was prepared to argue that the Petitioners' preferred application of this provision of Act 164 would have resulted in a violation of the Constitution of Pennsylvania.

I recognize that this statutory provision created additional uncertainty as to whether the Commission's decision would have been affirmed, and that there was the potential that the civil penalty could have been reduced to less than \$250,000. Accordingly, for that and the other reasons discussed in the proposed agreement, a reasonable settlement of this appeal would have been appropriate. However, I believe that if we had demonstrated more patience, a settlement for a significantly higher amount may have been negotiated, or if not, we should have let the Commonwealth Court address the merits of the Petition for Review.

It may be argued that the proposed settlement is in excess of any profit the Petitioners may have earned for the unauthorized service in question, and that it is thus sufficient to deter future violations of the Public Utility Code, or that even this reduced amount is too large. However, as a result of this agreement, the Petitioners will be paying only about \$28 for each proven violation of the Public Utility Code. By way of contrast, much smaller motor carriers of passengers and property are normally fined between \$250 to \$1,000 for a single violation of the Public Utility Code, including failure to maintain proof of insurance, file annual assessment reports, etc. Evaluating the size of a civil penalty or settlement without giving meaningfully appropriate weight to the quantity of the violations may result in regressive civil penalty policy for this agency. Nor was the Commission presented with a situation in which the Petitioners would be unable to continue service in Pennsylvania in the absence of a substantial reduction in the civil penalty. The Petitioners did not make this argument, and have already shown that they have the financial wherewithal to absorb multiple, recent, very large settlements resulting from litigation in other jurisdictions. A larger settlement would have served as an even stronger deterrent against future violations.

Finally, while the Petitioners have complied with the terms of the experimental authority granted by the Commission, I do remain concerned about future compliance with relevant laws or regulations, particularly where they may be in conflict with the Petitioners' preferred business practices. I hope that the payment of this civil penalty will cause the Petitioners to reevaluate their approach to the conduct of business in this Commonwealth. There are without question many federal, state or local laws or regulations that any one of us may disagree with as a matter of principle or public policy. However, we do remain a nation under the rule of law, and accordingly it is incumbent on all regulated entities to operate within the bounds of the law, and to pursue change through appropriate legislative or regulatory processes.

Therefore, I will be dissenting.

  
JOHN F. COLEMAN, JR.  
COMMISSIONER

**Date: April 6, 2017**