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April 14, 2015

VIA E-FILING

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

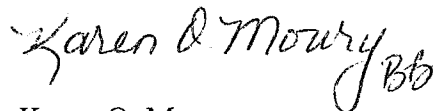
Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc., *et al.*
Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Motion of Uber Technologies, Inc. for a Protective Order, in the above-captioned matter.

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

Sincerely,

Handwritten signature of Karen O. Moury in cursive script, with the initials 'bb' written at the end.

Karen O. Moury

KOM/bb
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT	:	
	:	Docket No. C-2014-2422723
v.	:	
	:	
UBER TECHNOLOGIES, INC., <i>ET AL.</i>	:	

**MOTION OF UBER TECHNOLOGIES, INC.
FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGES LONG AND WATSON:

Pursuant to 52 Pa. Code § 5.365, by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, Uber Technologies, Inc. (“UTI”), *et al.* hereby files this Motion for a Protective Order, and requests that Administrative Law Judges (“ALJs”) Long and Watson issue a Protective Order in this proceeding. In support hereof, UTI avers as follows:

1. On June 5, 2014, the Bureau of Investigation and Enforcement (“I&E”) filed a Complaint against UTI. UTI filed an Answer to the Complaint on June 26, 2014.
2. On January 9, 2015, I&E filed an Amended Complaint against UTI, Rasier LLC, Rasier-PA LLC and Gegen LLC (collectively referred to as “the subsidiaries”). UTI filed an Answer to the Amended Complaint on February 2, 2015. The subsidiaries filed Answers on March 27, 2015.
3. The proceeding has been assigned to ALJs Long and Watson for hearings and issuance of an Initial Decision.
4. I&E has indicated to UTI’s counsel that it does not oppose this Motion for a Protective Order.

5. Confidential and proprietary information has been sought in discovery and may be presented in exhibits and testimony in this proceeding. Such information includes commercially-sensitive data that is highly confidential to UTI and the subsidiaries.¹ Information about the business model utilized by UTI and the subsidiaries and trip data collected by UTI and the subsidiaries about Pennsylvania operations are trade secrets, the public disclosure of which would be harmful to the business of UTI and the subsidiaries. Under well-established Pennsylvania law, a trade secret consists of a compilation of information which is used in one's business, and which gives one's business an advantage over competitors who do not know or use it. *See Sperry Rand Corp. v. Pentronix, Inc.*, 311 F. Supp. 910 (1970), 1970 U.S. Dist. LEXIS 12473; see also Restatement of Torts, Section 757. The crucial indicia for determining whether certain information constitutes a trade secret are "substantial secrecy and competitive value to the owner." *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 389 Pa. Super 219, 566 A.2d 1214, 1228 (1989).

6. Relatively new to Pennsylvania, the transportation network company ("TNC") industry is rapidly expanding to meet the needs of the riding public. Competition is fierce among TNCs, as well as between TNCs and traditional transportation providers, including call and demand carriers and limousine carriers. UTI and the subsidiaries rely heavily on the data they collect and analyze to assess their own performance, particularly as compared to their competitors, and to make decisions about growth and expansion of the business. Additionally, UTI and the subsidiaries employ various internal business practices that are unique to their operations and need to be safeguarded for competitive reasons.

¹ Rasier-PA LLC, a wholly owned subsidiary of UTI, has provided confidential trip data required by the Secretarial Letter dated July 28, 2014, under seal, to the Commission for review by Commissioners and advisory staff at the Commission who have duties to monitor compliance with the Commission's Orders entered on December 5, 2014 at Applications of Rasier-PA LLC, Docket Nos. A-2014-2416127 and A-2014-2424608.

7. Proprietary information within the definition of 52 Pa. Code § 5.365 has been produced and requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential, including but not limited to specific pricing information, highly sensitive contract terms, or other proprietary business information. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

8. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the ALJs may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: The extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1) – (3).

9. "Proprietary" or "Confidential" information is defined in Paragraphs 2 and 3 of the attached proposed Protective Order as "those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury." Paragraph 18 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the "Confidential" information.

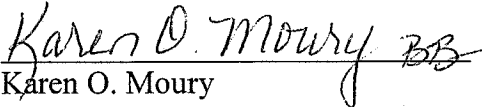
10. Limitation on the disclosure of “Confidential” information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

11. The attached suggested Protective Order sought by UTI and the subsidiaries will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

WHEREFORE, for all the reasons set forth above, Uber Technologies, Inc., et al. respectfully requests that Administrative Law Judges Long and Watson grant this Motion and issue the attached Protective Order.

April 14, 2015

Respectfully submitted,


Karen O. Moury
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101
Telephone: (717) 237-4820
Facsimile: (717) 233-0852

Attorneys for Uber Technologies, Inc., et al.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT	:	
	:	Docket No. C-2014-2422723
v.	:	
	:	
UBER TECHNOLOGIES, INC., <i>ET AL.</i>	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Uber Technologies, Inc., *et al.*,

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding. All persons previously or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That the materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being stamped "Confidential." Such materials will be referred to below as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. That the parties may designate as “Confidential” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.

4. Proprietary Information produced in this proceeding shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument or for settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information only to a party’s expert(s), subject to the conditions set forth in this Protective Order. However, such expert(s) may not be a “Restricted Person.”

5. Proprietary Information shall not be made available to a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party to this Protective Order, or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a party to this Protective Order (including any association of competitors of a party), or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of

a party to this Protective Order if the Proprietary Information concerns a specific, identifiable customer of the party; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1 percent interest in a business establishes a significant motive for violation.

6. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission ("Commission") and Commission Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

7. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, counsel shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgement from that person in the form attached to this Protective Order and designated as "Appendix A." A party's expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until a Non-Disclosure Certificate has

been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

8. If an expert for a party to this Protective Order, another member of the expert's firm or the expert's firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the other party to this Protective Order each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the party or its customers. The parties retain the right to challenge the adequacy of the written assurances that the parties or their customers' interests will not be jeopardized.

9. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible for such access, that person shall immediately inform the producing party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

10. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judges.

11. Proprietary Information shall not be used except as necessary for the conduct of this proceeding.

12. That none of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

13. A producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "Confidential." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked "Confidential."

14. The non-producing party will consider and treat the Proprietary Information as within the definition of "confidential information" in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to exemptions from disclosure as provided for in Section 708 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.708, until the information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

15. Any public reference to Proprietary Information by a party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

17. Any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this Protective Order or pursuant to an order of the Commission.

18. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate. Unresolved challenges shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365.

19. That within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the non-producing party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the non-producing party elects to destroy all copies of documents and other materials containing Proprietary Information instead of

returning the copies of documents and other materials containing Proprietary Information to the producing party, the non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

Dated: _____

Mary D. Long, Administrative Law Judge

Jeffrey A. Watson, Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT	:	
	:	Docket No. C-2014-2422723
v.	:	
	:	
UBER TECHNOLOGIES, INC., ET AL.	:	

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of information designated as "Proprietary Information" or "Confidential Information." The undersigned agrees that any Proprietary or Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT**

v.

UBER TECHNOLOGIES, INC., *ET AL.*

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: **Docket No. C-2014-2422723**
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CERTIFICATE OF SERVICE

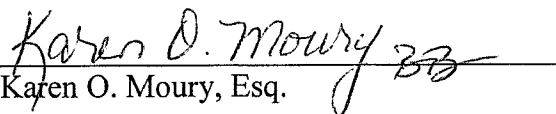
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via Email and First Class Mail

Michael L. Swindler, Esquire
Stephanie M. Wimer, Esquire
Wayne T. Scott, Esquire
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Mary D. Long
Jeffrey A. Watson
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jeffwatson@pa.gov

Dated this 14th day of April, 2015.



Karen O. Moury, Esq.