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October 13, 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., *et al.* (“Respondents”), I have enclosed for electronic filing the Motion for Settlement Conference and Assignment of Settlement Judge, in the above-captioned matter. The Respondents are offering this Motion in an effort to reach a comprehensive settlement of this proceeding that is in the public interest without the need for further litigation.

Currently, this proceeding is pending the issuance of an Initial Decision by the Administrative Law Judges (“ALJs”), with briefs having been filed and the record having been closed in August 2015. While the Respondents seek to participate in an ALJ-facilitated settlement conference as soon as possible, this Motion also sets forth an alternative request. Specifically, the Respondents alternatively request that the Commission hold this proceeding in abeyance when it issues the ALJs’ Initial Decision. By deferring the Exception and Reply Exception periods while a Commission-directed ALJ-facilitated settlement conference is held, the Commission can ensure that appropriate and reasonable resources are devoted to reaching a proper and conciliatory resolution of this proceeding.

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Copies of this Motion have been served on the presiding ALJs and the Bureau of Investigation and Enforcement as indicated in the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/bb  
Enclosure  
cc w/encl.:

Certificate of Service  
Gladys M. Brown, Chairman  
John F. Coleman, Jr., Vice Chairman  
Pamela A. Witmer, Commissioner  
Robert F. Powelson, Commissioner  
Andrew G. Place, Commissioner  
Jan Freeman, Executive Director  
Mary Beth Osborne, Director of Regulatory Affairs  
Office of Special Assistants

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION FOR SETTLEMENT CONFERENCE  
AND ASSIGNMENT OF SETTLEMENT JUDGE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.103 and 5.231, by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, Uber Technologies, Inc., et al. (“Respondents”) hereby file this Motion for Settlement Conference and Assignment of Settlement Judge (“Settlement Motion”) in the above-captioned proceeding involving an Amended Complaint filed by the Bureau of Investigation and Enforcement (“I&E”) against the Respondents on January 9, 2015, and in support hereof avers as follows:

**I. Introduction**

1. By this Motion, Respondents rely on the Commission’s regulations governing settlements to request that the Commission direct the parties to participate in a settlement conference facilitated by an administrative law judge (“ALJ”) in an effort to reach a comprehensive resolution of this proceeding that is in the public interest.

2. Such a directive would be consistent with the Commission’s policy of encouraging settlements and would offer an opportunity for a fair and reasonable alternative to a litigated outcome, thereby conserving valuable resources, providing certainty to the parties and permitting creative remedies that may not otherwise be required by the Commission.

3. This proceeding involves passenger trips provided in Allegheny County over a year ago, before the Commission granted emergency temporary authority (“ETA”) to Rasier-PA LLC to provide transportation network services in Allegheny County.<sup>1</sup> It is a classic example of a case that should have been settled without the need for protracted litigation. Indeed, I&E settled a nearly identical proceeding involving Lyft, Inc. (“Lyft”)<sup>2</sup> several months ago, and the Respondents are willing to enter into a settlement with I&E on similar terms.

4. Since January 29, 2015, Raiser-PA has successfully provided transportation network services in Allegheny County under a 2-year experimental authority certificate of public convenience issued by the Commission.<sup>3</sup> Clearly, the purposes of this proceeding have long since been fulfilled, with regulatory compliance having been achieved and services being offered consistent with the Commission’s requirements for driver integrity, vehicle safety and liability insurance coverage. Continued litigation serves no purpose and is contrary to the public interest.

5. The Respondents have attempted on numerous occasions, both informally and formally, to engage in meaningful settlement discussions with I&E, including after the filing of briefs in this proceeding. Based on the unsuccessful results of those efforts, it is clear that any chance for meaningful settlement discussions will occur only through the scheduling of a settlement conference and the assignment of an ALJ to participate in the settlement conference.

6. While the Respondents seek the scheduling of an ALJ-facilitated settlement conference as soon as possible, this Motion also offers an alternative approach, which would involve holding the proceeding in abeyance when an Initial Decision is issued. Rather than

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<sup>1</sup> *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No. A-2014-2429993 (Order entered July 24, 2014).

<sup>2</sup> *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Docket No. C-2014-2422713 (Order adopted July 15, 2015).

<sup>3</sup> *Application of Rasier-PA LLC for Experimental Authority in Allegheny County*, Docket No. A-2014-2416127 (Order entered on January 29, 2015). During this period of operation, Rasier-PA has filed Compliance Plans and Quarterly Reports and has cooperated with document reviews and vehicle inspections by Commission staff.

directing the filing of Exceptions, this approach would involve the scheduling of an ALJ-facilitated settlement conference.

## **II. Background**

7. On June 5, 2014, I&E filed a Complaint against Uber Technologies, Inc. (“UTI”), alleging that UTI was engaged in unauthorized transportation services in Allegheny County. By the Complaint, I&E sought various remedies, including a civil penalty in the amount of \$95,000.

8. A hearing was scheduled for October 23, 2014, which was later continued at the request of I&E. It was rescheduled for February 18, 2015.

9. On January 9, 2015, I&E filed an Amended Complaint against the Respondents. Through the Amended Complaint, I&E expanded the respondent parties to include UTI subsidiaries. It also revised its request for relief, including a proposed civil penalty of \$19,000,000.

10. On January 14, 2015, the Respondents filed a Motion for Settlement Conference and Assignment of Settlement Judge (“Original Settlement Motion”) requesting the scheduling of a settlement conference and the assignment of an administrative law judge (“ALJ”) to participate in the settlement conference. In the Original Settlement Motion, the Respondents generally described the settlement negotiations that had occurred prior to the filing of the Amended Complaint. Also, in the Original Settlement Motion, the Respondents offered to provide confidential trip data requested by I&E through discovery in the context of such a structured settlement conference.

11. By Interim Order dated January 23, 2015, the ALJs denied the Original Settlement Motion. In large part, this Interim Order was based on the unwillingness of I&E to

engage in settlement discussions with the Respondents because the trip data requested through discovery had not yet been provided to I&E.<sup>4</sup>

12. By Interim Order dated January 29, 2015, the ALJs cancelled the evidentiary hearing scheduled for February 18, 2015 and directed counsel to appear for a conference on February 18, 2015 to, *inter alia*, discuss the procedural schedule and stipulations of fact.

13. After reviewing the Interim Order on the Original Settlement Motion, the Respondents filed a Motion for Reconsideration on February 4, 2015 proposing to address the ALJs' holdings by providing trip data to I&E in advance of a structured settlement conference to facilitate productive discussions. The Respondents further proposed that the settlement conference be facilitated by an ALJ, which could be one of the presiding ALJs or a different ALJ. Although the ALJs encouraged settlement discussions at various times including during the conference held on February 18, 2015, no order was issued to rule on the Respondents' Motion for Reconsideration.

14. Evidentiary hearings on the Amended Complaint were held on May 6, 2015. I&E's Brief was filed on July 8, 2015; Respondents' Brief was filed on August 7, 2015; and I&E's Reply Brief was filed on August 14, 2015. By Interim Order dated August 17, 2015, the hearing record was closed.

15. The matter is pending issuance of an Initial Decision. Granting this Motion would provide a meaningful opportunity to reach a comprehensive settlement that would relieve the ALJs of the burdensome process of drafting an Initial Decision in a complex proceeding that has been litigated for over a year after the underlying issues have been resolved through the grant of Commission authority.

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<sup>4</sup> It is noteworthy that the Commission has had the confidential trip data since December 24, 2014 and that I&E has had this data since May 6, 2015. Indeed, the Respondents made it available to I&E much earlier in the proceeding on a confidential basis for the purpose of advancing settlement discussions.

### **III. Discussion**

16. “It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a). The Commission’s regulations permit parties, at any time, to request “conferences for that purpose.” 52 Pa. Code § 5.231(b). Similarly, the regulations allow parties to “request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designed to participate in the settlement conferences.” 52 Pa. Code § 5.231(c).

17. The ALJs have encouraged settlement discussions. The Respondents have gone to great lengths, through both formal and informal efforts, to engage in meaningful settlement negotiations with I&E, including after the filing of briefs and close of the record in this case. Despite these efforts, it is clear that any chance for meaningful settlement discussions will occur only through the scheduling of a settlement conference and the assignment of an ALJ to participate in the settlement conference.

18. Because (i) this proceeding involves passenger trips provided in Allegheny County over a year ago, before the Commission granted ETA to Rasier-PA LLC; (ii) I&E settled a nearly identical proceeding with Lyft; and (iii) the Respondents are willing to enter into similar settlement terms, this case should be settled. These factors warrant the use of the Commission’s ALJ-facilitated settlement conference approach that offers the only chance of a comprehensive resolution to avoid further litigation.

19. Even a settlement at this stage of the proceeding would avoid wasting significant and valuable administrative and other resources associated with continued litigation by the parties and adjudication by the Commission. It would streamline the Initial Decision and

Commission's Final Order, and if approved by the Initial Decision, would eliminate the need for filing Exceptions and Reply Exceptions.

20. Additionally, it would provide an opportunity for the Respondents to offer creative settlement terms that promote the public interest but that otherwise may not be ordered or directed by the Commission. For instance, a provision setting aside funds to enhance access to vehicles that accommodate wheelchairs could be included in a comprehensive settlement.

21. The wide disparity in the amount of civil penalty sought by the Complaint and the Amended Complaint filed by I&E, as well as the unsuccessful settlement negotiations to date, demonstrate the need for a neutral party to preside over settlement discussions and offer objective advice for resolving this matter.

22. In short, the scheduling of a settlement conference and the designation of an ALJ to participate in the settlement conference as soon as possible would provide an opportunity for a settlement of this case that will otherwise not occur. The unique circumstances presented by this proceeding warrant a creative approach by the Commission to ensure that reasonable and appropriate resources are devoted to its resolution and final outcome.

23. Alternatively, the Respondents suggest that the Commission hold the proceeding in abeyance at the time the Initial Decision is issued. By (i) waiving Section 5.533 of its regulations,<sup>5</sup> 52 Pa. Code § 5.533, which provide for the filing of Exceptions and Reply Exceptions with the issuance of an Initial Decision; and (ii) directing the scheduling of an ALJ-facilitated settlement conference, the Commission could provide one final opportunity for meaningful settlement discussions that could conserve substantial valuable resources. If these

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<sup>5</sup> See *Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-20016207, 2204 Pa. PUC LEXIS 26 (2004) (Commission may waive its regulations).

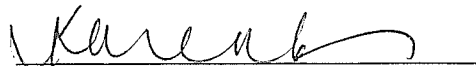


efforts would be successful, the Commission's review would be streamlined and a result would be achieved that is in the public interest.<sup>6</sup>

WHEREFORE, Uber Technologies, Inc., et al. respectfully requests that the Commission grant this Motion for Settlement Conference and Assignment of Settlement Judge.

Respectfully submitted,

October 13, 2015



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

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<sup>6</sup> In the event that a settlement would not be achieved during a reasonable period of time, the designated ALJ could inform the Commission of the need to establish exception and reply exception filing deadlines.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

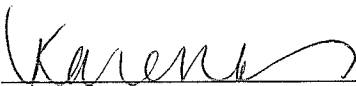
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via First Class Mail**

Michael L. Swindler, Esquire  
Stephanie M. Wimer, Esquire  
Wayne T. Scott, Esquire  
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Dated this 13<sup>th</sup> day of October, 2015.

  
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Karen O. Moury, Esq.