

**ORDER NO. 86877**

IN THE MATTER OF AN  
INVESTIGATION TO CONSIDER THE  
NATURE AND EXTENT OF  
REGULATION OVER THE OPERATIONS  
OF UBER TECHNOLOGIES, INC. AND  
OTHER SIMILAR COMPANIES

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9325

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**Issue Date: February 26, 2015**

On August 6, 2014, the Maryland Public Service Commission (“Commission”) issued Order No. 86528 affirming the Proposed Order of the Commission’s Public Utility Law Judge Division and directed Uber Technologies, Inc. (“Uber”) to file an application for a motor carrier permit within 60 days in order for Uber to continue to offer either its UberBLACK or UberSUV services in Maryland. Order No. 86528 also directed the Technical Staff of the Commission (“Staff”) to draft regulations to more effectively regulate the provision of transportation services, including but not limited to the use of new technologies to manage and dispatch requests for transportation for hire, insurance, safety of vehicles and qualifications of drivers, and the method of providing notice of rates to the Commission and consumers, seeking input from the Parties and other interested persons.

Uber filed a Motion for Stay and Request for Rehearing of Order No. 86528 on September 5, 2014. On November 25, 2014, Uber and Staff submitted a Joint Motion for

Approval of Agreement of Stipulation and Settlement (“Joint Motion”).<sup>1</sup> On December 1, 2014, the Commission issued a Notice of Request for Testimony/Comments and Evidentiary Hearing on the proposed settlement. On December 9, 2014, Staff filed the Direct Testimony of Christopher T. Koermer, which Uber adopted by letter filed that same day. The Maryland Office of People’s Counsel (“OPC”), and Yellow Transportation (“Yellow”) filed comments on December 16, 2014.

A hearing was held on the proposed settlement on December 19, 2014. At the hearing, Mr. Koermer appeared and testified in favor of the settlement on behalf of Staff. No witness appeared on behalf of Uber. Uber provided an Affidavit of Zuhairah Washington, General Manager of Uber DC (“Affidavit”). The Affidavit was not admitted as testimony but as a statement from Uber.

## **I. POSITIONS OF THE PARTIES**

### **A. OPC**

In its Comments filed December 9, 2014, OPC states that “[w]hile the framework of the proposed settlement appears to be a reasonable resolution of the core issues in this proceeding, OPC has identified several terms that are ambiguous or require further explanation to ensure that the settlement terms are unambiguous, enforceable, and in the public interest.” In its Post-Hearing Brief, OPC states that the Commission must be assured that the structure and terms of the settlement are sufficient to ensure that the Staff’s objectives are met. OPC maintains that this assurance includes verification of the

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<sup>1</sup> The Stipulation and Settlement Agreement begins on page 4 of the Joint Motion, attached hereto as Appendix A.

relationship between Uber and the entity Uber proposes be substituted for Uber, Drinnen LLC (“Drinnen”), Drinnen’s agreement to carry out the settlement terms, and that appropriate consumer disclosures about Drinnen’s role are provided. OPC’s concern is that since Drinnen is not a party in this case, there is nothing in the settlement or the record to establish that Uber has the authority to bind Drinnen, or that Drinnen has agreed to perform under the settlement. OPC notes that Uber continues to operate without a motor carrier permit despite the Commission’s August 6 order which was not stayed. OPC recommends that with regard to the Uber-Drinnen relationship and the consumer disclosures, the Commission not approve the settlement as proposed until Uber provides satisfactory clarifying responses on the record or as part of a modification of the settlement.

With regard to the surge pricing component of the settlement, OPC notes that there are no criteria, parameters or limits on the surge pricing in the settlement. OPC concludes based on the testimony during the hearing that this settlement term is too ambiguous and too open-ended. OPC states that while Staff may have views or opinions as to the handling and resolution of surge pricing requests, these are not reflected in the settlement, which OPC believes could lead to further litigation if the surge pricing proposal were denied because it was determined to be unjust or unreasonable. OPC recommends that the proposed settlement be modified to require that any surge pricing proposal must meet specified criteria to be approved by the Commission, after notice and opportunity of parties to review and comment. Lastly, OPC recommends that the settlement be clear that Commission denial of a surge pricing proposal because it does

not satisfy the requirements of Title 4 does not affect the legal obligations of Uber and Drinnen under the settlement.

**B. Yellow**

In its Post-Settlement Hearing Brief, Yellow makes several arguments in opposition to the proposed settlement. Yellow contends that the two primary elements of the proposed settlement, the substitution of Drinnen for Uber and the approval of surge pricing, are not sufficiently supported with credible evidence in the record. Yellow points to several questions that Staff's witness was unable to answer, and contends that the Commission has no evidence to conclude that the proposed settlement, if accepted, will be binding on the intended entity. Yellow also states that the likelihood of customer confusion is manifest and requires justification in the record. Yellow maintains that the Affidavit cannot be considered reliable and competent evidence in the evaluation of this settlement, and that the Affidavit fails to fully answer many questions that have been raised.

Yellow also argues that the proposed settlement compromises important public interests. Yellow urges the Commission to factor corporate behavior into its decision to accept or reject the settlement. Yellow notes that since UberX drivers will continue to operate without permits, Uber will continue to operate illegally, which Yellow maintains is a basis for rejecting the proposed settlement.

Yellow questions the purpose of the language in Paragraph 6 of the settlement which contains regulatory language that may be included in the proposed revisions to the Code of Maryland Regulations ("COMAR") 20.95. In particular Yellow objects to the

reintroduction of the term “broker” because Uber’s position that it acts as a broker has already been rejected in this case.

Yellow urges the Commission to fully evaluate pricing considerations. Yellow notes that the settlement appears to effectively pre-approve the rates that Uber has and will be charging in Maryland, including surge pricing, despite the fact that the Commission has not previously reviewed surge pricing methodology.

Yellow poses the question in this case as one of whether the proposed settlement puts the public in a better position than Commission Order No. 86528. Yellow states that by accepting the settlement, “the Commission gets questionable oversight authority over a basically unknown entity and to avoid Uber appeals having dubious viability. Uber, on the other hand, avoids having the ‘Uber’ brand suffer the ‘blemish’ of submission to Commission regulation and the pre-approval of its rate structure including surge pricing while only giving up litigation it is highly unlikely to win.” Yellow concludes that the settlement makes no sense for Maryland and should be rejected in favor of the previously ordered compliance.

### **C. Uber**

Uber asserts that the proposed settlement serves the public interest because it implements Commission Order No. 86528. Specifically, Uber contends that the settlement will ensure that the services provided by transportation providers who connect with passengers via Uber’s digital platform comply with the Commission’s common

carrier framework. Uber states that the settlement will provide regulatory certainty to the licensed drivers and permit-holding carriers who utilize the Uber app, as well as Maryland consumers who use the services provided. Uber argues that the settlement will bring this investigation to closure with the end of Uber’s appeals. Uber notes that the settling parties in this instance are adverse to each other because they vigorously advocated their divergent positions over the course of an 18-month proceeding. Uber urges the Commission to not undo “a carefully negotiated settlement.”

**D. Staff**

Staff states that the settlement serves the public interest by offering new options to the riding public, and making for-hire transportation industry in Maryland more competitive. In Staff’s view, the settlement would apply Maryland’s existing regulatory requirements for passenger-for-hire transportation companies to the operations of UberBlack and UberSUV, and permit them to operate legally in Maryland, while adhering to the standards the Commission enforces to protect the safety of the riding public.

**II. STANDARD OF REVIEW**

The Commission has consistently stated that when considering a settlement, whether contested or otherwise, the Commission must determine that the settlement is in the public interest and that it is supported by substantial evidence.<sup>2</sup> We must review a proposed settlement to ensure that the outcome, and the resulting rates, are just and

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<sup>2</sup> *In the Matter of the Proposed Merger of the Potomac Electric Power Company and Delmarva Power and Light Company*, 93 Md.P.S.C. 134, 137 (2002).

reasonable.<sup>3</sup> As this is a contested settlement, we may also consider such factors as the desirability of avoiding costly and time-consuming litigation, and whether the settling parties represent interests that are normally adverse to one or more of the other settling parties.<sup>4</sup>

### **III. DISCUSSION AND FINDINGS**

The parties to a proposed settlement have the burden of supporting the proposed settlement with substantial evidence. Staff provided substantial evidence with respect to the terms of the settlement in the form of written and oral testimony. Uber adopted Staff's written testimony but did not have a representative available to testify on its behalf (or on behalf of Drinnen, its wholly owned subsidiary it wishes to have substituted) at the hearings on the proposed settlement. Given the questions posed by other parties and the Commission that could not be answered sufficiently, we find that Uber did not provide substantial evidence with respect to a number of the terms of the settlement as proposed.

However, resolution of the issues in this proceeding, namely compliance with regulatory requirements for transportation services and assurance of public safety through use of drivers with Commission-issued operating permits and fully insured Commission-inspected vehicles<sup>5</sup>, are important objectives that are in the interest of the riding public. Thus, we find the proposed settlement, supported by substantial evidence submitted by

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<sup>3</sup> See *Re Delmarva Power and Light Company*, 102 Md.P.S.C. 236, 240 (2011).

<sup>4</sup> *Re Potomac Electric Power Company*, 80 Md.P.S.C. 61, 64 (1989).

<sup>5</sup> See COMAR 20.95.01.04 *et seq.*

Staff, is in the public interest.<sup>6</sup>

**IT IS THEREFORE**, this 26th day of February, in the year Two Thousand Fifteen, by the Public Service Commission of Maryland,

**ORDERED:** that the proposed settlement is hereby approved.

*/s/ W. Kevin Hughes* \_\_\_\_\_

*/s/ Harold D. Williams* \_\_\_\_\_

*/s/ Lawrence Brenner* \_\_\_\_\_

*/s/ Kelly Speakes-Backman* \_\_\_\_\_

*/s/ Anne E. Hoskins* \_\_\_\_\_

Commissioners

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<sup>6</sup> Paragraph 16 of the proposed settlement makes it clear that acceptance of the settlement shall not be deemed to constitute an agreement on our part to forego any power which we presently have. This would include the power to take enforcement actions against permit applicants/holders based on the operation of affiliates under our jurisdiction.



# **APPENDIX A**

## **Stipulation and Settlement Agreement**

This Settlement is entered into by and between Uber Technologies, Inc. (“UTI”) and the Staff of the Public Service Commission (“Staff”) (collectively “Parties”). The Parties agree as follows:

### **I. Scope of Settlement**

This Settlement shall resolve all issues that were raised or could have been raised in CaseNo. 9325 relating to UTI.. In particular, the settlement agreement shall pertain to the following pending matters:

1. UTI’s application for rehearing of Order No. 86528 (the “Order”) in Case No. 9325;

and

2. UTI’s appeal in the Court of Special Appeals, *Uber Technologies, Inc. v. Maryland Public Service Commission*, September Term, 2013 No. 2058 Term, 2013 No. 2058 (Court of Special Appeals).

### **II. Terms**

The terms of this Settlement between UTI and Staff are as follows:

1. Order No. 86528 in Case No. 9325 shall be modified to substitute Drinnen LLC (“Drinnen”) for Uber Technologies, Inc. (“UTI”) as the common carrier subject to Commission regulation as set forth in the Order.

2. Filing requirements pursuant to the Order shall be stayed pending comment and hearing on this proposed Settlement, to be filed in Case No. 9325.

3. Upon approval of the Settlement by the Commission, Uber shall dismiss its appeal in the Court of Special Appeals, *Uber Technologies, Inc. v. Maryland Public Service Commission*, September Term, 2013 No. 2058.

4. Drinnen shall file for a motor carrier permit upon Commission approval of this Settlement. Approval of the Settlement shall constitute Commission approval for Drinnen to operate as a common carrier under the terms and conditions contemplated under the terms described in the Settlement and applicable existing regulations, until revised regulations are adopted by the Commission.

5. In connection with its application for a motor carrier permit, Drinnen shall make available to the Commission the identity of the drivers who have entered into an agreement to accept trip requests from UTI's digital platforms in Maryland.

6. Staff's proposed revisions to COMAR may incorporate the following definitions, subject to the discussions to be conducted in a Working Group regarding revisions to existing for-hire transportation regulations in COMAR 20.95. In particular COMAR 20.95.01.03 may be amended to include the following definitions:

(1) "Broker" means an organization whether a corporation, partnership, LLC, sole proprietor, or other formal business entity, issued a permit by the Commission and operating in the State of Maryland that uses a digital platform to connect passengers to transportation providers, including Sedan Service Vehicles.

(2) "Surge pricing" means the practice by a Broker of temporarily increasing fares at certain times and places in response to increased demand for transportation services.

(3) "Digital Platform" means an online digital network used by a Broker to connect riders to transportation providers.

7. Commission approval of this Settlement shall constitute Commission authorization for Drinnen to file with the Commission a schedule of its times, rates, and charges, that may include a range of maximum and minimum rates, including surge pricing. Drinnen shall provide access to a copy of the effective and proposed schedule of times, rates, and charges to the public at their principal place of business and on a website accessible by the general public on the World Wide Web.

8. Any regulations Staff proposes at the conclusion of the Working Group regarding revisions to existing for-hire transportation regulations in COMAR 20.95 shall permit the use of surge pricing and digital platforms to connect riders to transportation providers, and include a requirement that carriers using digital platforms to connect riders to transportation providers shall make available the following information to a passenger before the passenger arranges a trip:

- (1) The method for calculating the fare;
- (2) The applicable rate being charged; and
- (3) The option to receive an estimated fare for the transportation service that will be provided based on passenger-input pick-up and drop-off points.

9. For its operations in Maryland in connection with trips accepted from UTI's digital platforms, Drinnen shall use only drivers that have Maryland passenger-for-hire driver's licenses, and vehicles that have Maryland operating permits, except that drivers and vehicles that are duly licensed in neighboring jurisdictions may transport passengers from those jurisdictions into Maryland. It is understood that these drivers may also contract with other motor carriers.

10. The Parties intend for this Settlement to settle all issues previously identified in these proceedings through testimony and/or schedules in Case No. 9325 which may be subject to the Commission's regulations. The Parties agree that the resolution of the issues herein, taken as a whole, is in the public interest. The Parties agree that this Settlement will remain effective for either 5 years after it is accepted by the Commission or, if earlier, up to the day on which the Commission's revisions to COMAR as set forth in Section II, Paragraph 6 above become effective.

11. This Settlement shall be effective immediately upon Commission approval.

### **General Provisions**

12. This Settlement is being entered into for the purpose of disposing of the issues that are specifically addressed in this Settlement. In presenting this Settlement, none of the Parties shall be deemed to have approved, accepted, agreed, consented, or acquiesced to any regulatory principle or procedural principle, and none of the Parties shall be prejudiced or bound in any manner by the terms of this Settlement (whether it is approved or not) in this or any other proceeding, other than a proceeding limited to enforcement of the terms of this Settlement, except as otherwise expressly specified herein.

13. This Settlement has resulted from extensive negotiations and the terms hereof are interdependent. Notwithstanding any other provision of this Settlement, if the Commission does not approve this Settlement without modification, then the Settlement shall be void and no signatory shall be bound by any of the agreements or provisions contained herein.

14. If the Commission does not unconditionally approve this Settlement without modification, and notwithstanding its provision that it shall become void, neither this Settlement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any signatory has for a decision in this matter. The Parties shall retain all procedural and due process rights as fully as though this Settlement had not been presented for approval, and any memoranda, testimony or exhibits that have been offered or received in support of this Settlement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

15. If the Commission unconditionally accepts the specific terms of this Settlement without modification, the Parties waive, with respect to the issues resolved herein their respective rights to: (1) seek rehearing and (4) judicial review. These waivers apply only to a Commission order respecting this Settlement issued in the above-captioned proceedings, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Settlement. This Settlement contains the entire agreement of the Parties concerning the issues addressed herein.


16. This Settlement does not constitute a contract with the Commission. Acceptance of this Settlement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative, or other power which the Commission presently has. Thus, nothing in this Settlement is intended to impinge or restrict in any manner the exercise by the

Commission of any statutory right, including the right to access information, or any statutory obligation.

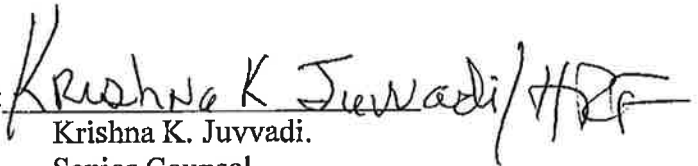
17. The Parties agree to cooperate in presenting this Settlement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Settlement.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Public Service Commission of Maryland enter an order granting this request and approving the Stipulation and Settlement Agreement contained herein.

STAFF OF THE PUBLIC SERVICE  
COMMISSION

By:   
Lloyd J. Spivak, Esq.  
Assistant Staff Counsel

UBER TECHNOLOGIES, INC.

By:   
Krishna K. Juvvadi.  
Senior Counsel  
Uber Technologies, Inc.