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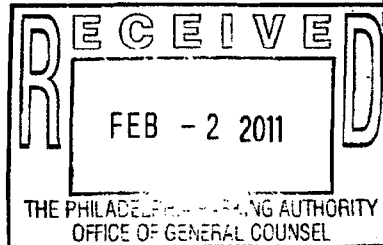
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2885

February 1, 2011



#005

Philadelphia Parking Authority
Attn: General Counsel
3101 Market Street, 2nd Floor
Philadelphia, PA 19104

VIA FEDERAL EXPRESS

**RE: Written Comments to Philadelphia Parking Authority
Notice of Proposed Rulemaking, Published Saturday, January 15, 2011
PA Bulletin, Doc. No. 11-105**

Dear Sir:

Enclosed is the original and fifteen copies of written comments to the above-referenced Notice of Proposed Rulemaking. These comments are submitted on behalf of the Pennsylvania Bus Association. The Pennsylvania Bus Association is a nonprofit organization dedicated to representing the business and governmental interests of private bus companies operating in Pennsylvania. The Pennsylvania Bus Association has had a strong commitment to the safety of the traveling public and the economic well-being of its member companies since 1923.

The Philadelphia Parking Authority has taken the position that Act 94 of 2004 resulted in buses¹ operating within Philadelphia to fall under the auspices of its authority. Upon initial enactment of this legislation and the Philadelphia Parking Authority's original regulations, several members of the Pennsylvania Bus Association brought suit against the Philadelphia Parking Authority asserting the Philadelphia Parking Authority's claimed authority over buses was preempted by Federal law. That suit concluded with a Settlement Agreement between the parties, which is still in effect today.

The proposed rules the Philadelphia Parking Authority published on January 15, 2011, will overburden and cause additional expense to the bus industry, which has continued to struggle in these difficult economic times. As shown in the attached chart, the proposed rules are confusing and unmanageable in determining when a Philadelphia Parking Authority certificate or

¹ When referring to buses in these comments, we are focused on the charter bus/motorcoach sector of the industry.

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registration is required. In addition, as more fully explained below, the proposed regulations duplicate extensive laws and regulations imposed on buses by the Federal Motor Carrier Safety Administration, and are preempted by at least two Federal laws.

1. **Preemption** – The proposed rulemaking, Subchapter D of Chapter 1053 (relating to large vehicles) as it pertains to buses, is preempted by Federal law. Specifically, 49 U.S.C. §14501(a)(1)(C) provides:

(a) Motor carriers of passengers. –

(1) Limitation on State law. – No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to –

* * *

(C) the authority to provide intrastate or interstate charter bus transportation.

49 U.S.C. §14501(a)(1)(C)

Additionally, the Uniform Carrier Registration Act, 49 U.S.C. 14504, *et. seq.* ("UCR") prohibits a state or any political subdivision of the state from enacting, imposing or enforcing on an interstate motor carrier any requirement of registration, filing of insurance information or annually renewing its intrastate authority. 49 U.S.C. §14504(c) The UCR also prohibits a state from requiring an interstate motor carrier to display identification in excess of those enumerated at 49 U.S.C. 14506(b). 49 U.S.C. §14504(i)(4)(B)

A review of these provisions makes it clear that the Philadelphia Parking Authority is preempted from imposing the requirements set forth in the proposed regulations on buses providing intrastate or interstate charter bus transportation. As such, enacting the proposed rules to include buses within the category of large vehicle or limousine will do nothing more than create additional legal challenges and burdens. Consequently, the proposed rule should be revised to make it clear that buses are not within the category of large vehicle or limousine, and will not be regulated by the Philadelphia Parking Authority.

The regulations proposed that relate to buses cannot be deemed to be excluded from this preemption because they pertain to safety and insurance. As noted below, safety and insurance compliance for buses is already sufficiently covered by state and federal law.

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Buses are regulated by the Pennsylvania Public Utility Commission (for intrastate operations) and the Federal Motor Carrier Safety Administration (for interstate operations). The Federal Motor Carrier Safety Administration enforces Federal regulatory requirements set forth at 49 C.F.R. §390, *et. seq.* upon buses operating in interstate commerce. Pennsylvania has enacted and routinely enforces extensive state and federal regulations upon buses operating in interstate and intrastate commerce. 67 Pa. Code Chapters 229 and 231 This is done by periodic roadside and destination inspections conducted by various Federal and State law enforcement officials. All buses based in Pennsylvania are subject to undergo a vehicle safety inspection every six months and must display a sticker evidencing they have done so. 75 Pa.C.S. §§4702(b), 4703. Both the Federal and State regulations require buses to have insurance of \$5,000,000 combined, single limit, per accident, per vehicle. 49 C.F.R. §387.9, 52 Pa. Code §32.11.

Enacting, imposing or enforcing any additional rules relating to safety and insurance upon the bus industry would be redundant and unreasonable. Clearly, the bus industry is sufficiently regulated by the Federal Motor Carrier Safety Administration, the PA Public Utility Commission and the Pennsylvania Department of Transportation and should not be included in these proposed regulations. As such, all provisions in the proposed rulemaking that would place requirements on buses should be removed.

In the event that the Philadelphia Parking Authority does not agree to remove the regulations relating to buses, we offer the following additional comments.

2. **Section 1051.2. Definitions** – This section includes definitions for "limousine" and "limousine service". These definitions are inconsistent with the definitions in Act 94 of 2004. Specifically, the proposed rulemaking defines "limousine" as "[A] vehicle meeting the definition provided in section 5701 of the act (relating to definitions)". However, there is no definition for "limousine" in 53 Pa.C.S. §5701. Further, "limousine service" is defined in 53 Pa.C.S. §5701, but the definition for "limousine service" in the proposed rulemaking is not consistent with the definition in that section. We suggest changes to make the definitions of these terms in the proposed rulemaking consistent with 53 Pa.C.S. §5701.

3. **Section 1053.43(d)(2)** – This subsection provides that , "[L]imousines registered as provided in this section must comply with the instructions of Authority staff, including inspectors, and submit to field inspections as provided in 1055.14..." This language is unnecessarily broad. We suggest the following alternative language:

Limousines registered as provided in this section must submit to field inspections as directed by authorized employees of the Authority. Authorized employees of the Authority shall be those employees who have successfully completed training necessary to conduct the inspection. The

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authorized employee shall carry and display credentials evidencing their successful completion of training.

The training that these authorized employees must successfully complete must include training covering the provisions of 49 C.F.R. Part 396 and 67 Pa. Code §175.91, *et. seq.*. This training specification must be described in the proposed rulemaking.

We look forward to receiving your responses to our comments.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Barbara A. Darkes

BAD/jlh

c: Elaine Farrell, CAE
Executive Director, Pennsylvania Bus Association

PHILADELPHIA PARKING AUTHORITY
Proposed PA Bulletin Rulemaking Published January 15, 2011

**Chart Showing When and How a PA Bus Company
 Must Comply with the PPA Proposed Rulemaking
 As a result of Act 94 of 2004**

	▼ Type of Motorcoach Transportation Within, To, From Philadelphia ▼					
	#1	#2	#3	#4	#5	#6
If motor coach operator has PUC Authority ▼▼▼▼▼▼	WITHIN Philadelphia with or without <u>advance reservation</u>	FROM Philadelphia TO OUTSIDE Philadelphia with <u>advance reservation</u>	TO Philadelphia FROM OUTSIDE Philadelphia with <u>advance reservation</u>	FROM airport, railroad or hotel <u>regardless of advance reservation</u> TO point OUTSIDE Philadelphia	TO airport, railroad or hotel FROM WITHIN Philadelphia	Provide exclusive scheduled service to or from airport, railroad or hotel in Philadelphia <u>without advance reservation</u>
YES - PUC Authority	YES 5741(a.1)(1) 5701(1)(i) NOTE: New regulations at 1053.41(b) assert compliance with 1053.43 registration and regulation requirements n 1053.43(c)-(f) BUT 1053.43(c)(1) limits registration to remote carriers. 1053.43(d)-(f) still must be followed.	NO 5741(a.3)(2) BUT see #4 example	NO 5741(a.3)(1)	YES 5741(a.3)(2) 5701(1)(ii)(A) NOTE: New regulations would make this a remote carrier which does still require registration	YES 5701(1)(ii)(B) NOTE: New regulations at 1053.41(b) assert compliance with 1053.43 registration and regulation requirements in 1053.43(c)-(f), BUT 1053.43(c)(1) limits registration to remote carriers. 1053.43(d)-(f) still must be followed.	YES 5741(a.2) NOTE: New regulations at 1053.41(b) assert compliance with 1053.43 registration and regulation requirements in 1053.43(c)-(f) but 1053.43(c)(1) limits registration to remote carriers. 1053.43(d)-(f) still must be followed.
NO - PUC Authority	YES 5741(a.1)(1) 5701(1)(i)	YES 5741(a.1)(2) and (4)	YES 5741(a.1)(3)	YES 5741(a.3)(2) 5701(1)(ii)(A)	YES 5701(1)(ii)(B)	YES 5741(a.2)
YES = requires PPA Certificate; NO = does not require PPA Certificate to operate						

Analysis as of January 26, 2011 as to who needs to register with the Philadelphia Parking Authority if the January 15, 2011 Proposed Regulations proceed.

Any transport referenced that deals with transport to or from an airport, railroad station or hotel is an airport, railroad or hotel located in whole or part in the City of Philadelphia.

NO means operator must not register with PPA: YES means operator must register with PPA.

2885

Cooper, Kathy

From: Patricia DeMarco [PDeMarco@philapark.org]
Sent: Thursday, February 10, 2011 9:53 AM
To: IRRC
Cc: Smith, James M.; Dennis Weldon
Subject: Barbara A. Darkes, Esquire (Philadelphia Parking Authority Comment #005)
Attachments: 110203.ltr to IRRC with Barbara Darkes' Comment.pdf; 110201.Comments by Barbara A. Darkes (#005).pdf

Good Morning:

Please see the attached Comment from Barbara A. Darkes, Esquire received by The Philadelphia Parking Authority on February 2, 2011 and mailed to IRRC on February 3, 2011. For some reason, IRRC has not received said Comment as of this date. The Philadelphia Parking Authority has numbered Ms. Darkes' Comment as #005. Accordingly, please record and post Ms. Darkes' Comment on IRRC's website.

Thank you.

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