	RECEIVED
Regulatory Analysis Form (Completed by Promulgating Agency)	INDEPENDENT REGULATO REVIEW COMMISSION 2012 MAY -7 AM 10: 24
(All Comments submitted on this regulation will appear on IRRC's webs	
(1) Agency:	
Philadelphia Parking Authority	
(2) Agency Number: 126	-1.17
Identification Number: 2	IRRC Number: 2993
(3) PA Code Cite: 52 Pa. Code § 1005.114	
(4) Short Title: Electronic testimony	
(5) Agency Contacts (List Telephone Number and Email Ac	ldress):
Primary Contact: Dennis G. Weldon, Jr., General Counsel at (FAX: 215-683-9619), 3101 Market Street, 2 nd Floor, Philad	
683-6417 (FAX: 215-683-9437), 2415 South Swanson Street	et, Philadelphia PA 19148.
(6) Type of Rulemaking (check applicable box):	· · ·
(6) Type of Rulemaking (check applicable box): X Proposed Regulation	nergency Certification Regulation;
(6) Type of Rulemaking (check applicable box):	· · ·
 (6) Type of Rulemaking (check applicable box): X Proposed Regulation Final Regulation 	nergency Certification Regulation; Certification by the Governor Certification by the Attorney General
 (6) Type of Rulemaking (check applicable box): X Proposed Regulation Final Regulation Final Omitted Regulation 	hergency Certification Regulation; Certification by the Governor Certification by the Attorney General Inguage. (100 words or less) Iministrative hearings by telephone or other s form of remote testimony will not be
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No. 22), as amended, 53 Pa. C.S. §§ 5505(d)(17)), (d)(23), (d)(24).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed and is the public interest for the reasons identified in response to question No. 7 above.

Those who lodge complaints with the Authority regarding inadequate service or other taxicab or limousine related service issues will benefit from the ability to testify at administrative hearings remotely. All parties to administrative hearings will benefit by the ability to present witnesses in support of their respective positions, particularly when those witnesses might otherwise have been precluded from testifying in the administrative hearing courtroom.

While the purpose of this regulation is not to impact costs of any party, this regulation may reduce the likelihood of hearing continuances, eliminate unnecessary travel time, time away from work and costs for witnesses and permit the development of a more complete record in administrative actions. While this benefit is very difficult to quantify in dollars, it is believed that it will result in reduced costs and overall efficiencies related to the administrative hearing process.

(11) If data is the basis for this regulation, please provide a description of the data, explain <u>in detail</u> how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

None. It is believed that making the participation of witnesses in an administrative action easier and less time consuming will not adversely affect anyone.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

This is a general administrative hearing regulation; therefore, each person who may become a party to an administrative action before the Authority may be affected, although the flexibility of the proposed regulation relates to non-party witnesses. Also, every member of the public who will benefit from the ability to participation as a witness in an administrative action without need to appear in the courtroom in which the hearing is conducted will be positively affected.

The Authority approximates that "regulated parties" in Philadelphia includes:

4,300 drivers
700 taxicab medallion owners
6 partial-rights carriers
4 brokers
14 dispatchers
127 limousine companies

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation is intended to ease the attendance standards for witnesses at administrative hearings. The purpose is to improve the quantity and quality of evidence submitted at such hearings. This regulation will not require a regulated party to do anything, but will permit additional options in furtherance of the advancement of a claim or defense at administrative hearings.

This regulation is anticipated to be revenue neutral to all regulated parties, although non-party witnesses may experience cost savings in areas such as the elimination of travel time and lost time from work.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation is intended to ease the attendance standards for witnesses at administrative hearings. The purpose is to improve the quantity and quality of evidence submitted at such hearings. This regulation will not require the Authority or local government instrumentalities to do anything, but will permit additional options in furtherance of the advancement of a claim or defense at administrative hearings. The Authority hearing courtroom is already equipped with a conference call type telephone that will meet the requirements of this regulation. Therefore, no cost to obtain necessary equipment is anticipated.

This regulation is anticipated to be revenue neutral to the Authority and all local governments, although non-party witnesses may experience cost savings in areas such as the elimination of travel time and lost time from work. (16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation is intended to ease the attendance standards for witnesses at administrative hearings. The purpose is to improve the quantity and quality of evidence submitted at such hearings. This regulation will not require the Authority or state government instrumentalities to do anything, but will permit additional options in furtherance of the advancement of a claim or defense at administrative hearings. The Authority hearing courtroom is already equipped with a conference call type telephone that will meet the requirements of this regulation. Therefore, no cost to obtain necessary equipment is anticipated.

This regulation is anticipated to be revenue neutral to the Authority and all local governments, although non-party witnesses may experience cost savings in areas such as the elimination of travel time and lost time from work.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
<u> </u>	Year	Year	Year	Year	Year	Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community				-		
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government	-					
State Government			1			
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Authority budget for taxicab and limousine regulation	\$5,513,741	\$5,448,278	\$5,732,278	\$5,997,500
	-			

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no anticipated adverse effects, nor additional costs associated with this proposed regulation.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The proposed regulation was publicized with requests for comment as follows:

1. Emailed to all certificate holders and any other person with an email address registered with the Authority's Taxicabs and Limousine Division ("TLD") on January 13, 2012.

2. Delivered to the City of the First Class Taxicab and Limousine Advisory Committee on January 13, 2012. See 53 Pa.C.S. § 5702.

3. Posted on the TLD's website at www.philapark.org/tld on February 6, 2012.

4. Considered and entered as an order at a Sunshine Act meeting of the Authority's Board on February 27, 2012.

5. The Authority received no comments to this proposed regulation.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

None.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The standards for administrative hearings vary widely between the states and federal government; however, it is believed that the proposed regulation will increase the likelihood that a witness to an administrative action will appear at the hearing. Increased attendance of witnesses at these hearing will increase the data available to presiding officers and improve the overall quality and thoroughness of administrative decisions.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The regulation will build upon existing procedures and not supplant or contradict any existing regulation of the Authority or other state agency.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The general public as well as all of the listed constituencies will benefit from the ability to remotely participate in Authority administrative hearings, particularly if distance or mobility issues are present.

(26) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:

30 days after publication in *Pa*. *B*

B. The date or dates on which public meetings or hearings will be held:	N/A
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	July 1, 2012
D. The expected effective date of the final-form regulation:	Fall 2012
E. The date by which compliance with the final-form regulation will be required:	Upon publication in <i>Pa. B</i>
F. The date by which required permits, licenses or other approvals must be obtained:	N/A
(27) Provide the schedule for continual review of the regulation.	
N/A	

CDL - 1		RECEIVED IRRC
FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU		2012 MAY -7 AM 10: 24
(Pursuant to Common	wealth Documents Law)	
		DO NOT WRITE IN THIS SPACE
Copy below is hereby approved as to form and legality. Alterney General.	Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or independent Agencies.
BY(DEPUTY ATTORNEY GENERAL)	Philadelphia Parking Authority (AGENCY)	BY Dennis G. Weldon, Jr. General Counsel
APR 1 9 2012	DOCUMENT/FISCAL NOTE NO. Docket No 126-2/PPA receives no money from the State Treasury—No Fiscal Note.	DATE OF APPROVAL
Check if applicable Copy not approved. Objections attached	DATE OF ADOPTION <u>February 27, 2012</u> BY <u>Vincent J. Fenerty, Jr.</u>	Check if applicable. No Attorney General approval or objection within 30 days after submission.

Proposed Rule Making No. 126-2 Final Rulemaking Philadelphia Taxicab and Limousine Regulations 52 Pa. Code § 1005.114

The Philadelphia Parking Authority on February 27, 2012, adopted a proposed rulemaking order which establishes a regulation permitting electronic (telephonic or audio-visual) testimony at certain administrative hearings, pursuant to certain limitations. The contact person is Dennis G. Weldon, Jr. General Counsel, 215-683-9630.

THE PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order Philadelphia Taxicab and Limousine Regulations

Docket No. 126-2

PROPOSED RULEMAKING ORDER

BY THE AUTHORITY:

In accordance with of the act of July 16, 2004, (P.L. 758, No. 94), as amended, 53 Pa.C.S. §§5701 et seq., (the "Act"),¹ the Authority formally commences its rulemaking process to promulgate a regulation to provide for electronic testimony, under certain terms and conditions, at administrative hearings. The Authority seeks comments from all interested parties on these proposed regulations, which are found at Annex A to this Order.

A. Background

Pursuant to Section 23 of the Act, the Authority initiated regulatory oversight of taxicab and limousine service providers in Philadelphia on April 10, 2005. On December 3, 2011, the Authority's new taxicab and limousine regulations became effective upon publication in the *Pennsylvania Bulletin.* 41 Pa.B. 6499 (December 3, 2011).

DISCUSSION

Members of the public who use taxicab and limousine service often do so in the course of business, travel and tourism. They are often not Philadelphia residents. Nearly half of administrative enforcement actions initiated by the Authority against taxicabs or limousines in Philadelphia begin with a complaint from members of the public. Many of the enforcement complaints are contested by regulated parties, which necessitates on-the-record administrative hearings. At these hearings the Authority bears the burden of proving by a preponderance of the evidence that the respondent committed the alleged infraction.

It is often difficult to advance these administrative complaints because the primary complainant does not reside in the Philadelphia area or is simply unable to take time away from work or family to appear at an administrative hearing. Similarly, regulated parties may find defending these complaints difficult because defense witnesses are similarly unavailable for these hearings. The proposed regulation will ease the burden of all parties to administrative hearings as to the receipt of non-party witness testimony.

1

¹ See Sections 13 and 17 of the Act.

The Authority provided advanced notice of this proposed rulemaking to the Chairman of the City of the First Class Taxicab and Limousine Advisory Committee ("Advisory Committee") by way of email and First Class United States Mail, with proof of mailing on January 13, 2012. The same form of notice was used to forward the proposed regulation to each member of the Advisory Committee; however, those members with inactive or unavailable email addresses only received notice through First Class United States Mail, with proof of mailing. Notice was also provided through email to regulated parties who maintain an email account with the Authority. A copy was also placed on the Authority's website. The Authority received no comments.

CONCLUSION

The Authority, therefore, formally commences its rulemaking process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at 717-783-5417.

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), as amended, 53 Pa. C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5 we are considering adopting the proposed regulations set forth in Annex A², attached hereto;

THEREFORE,

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulation set forth in Annex A.

2. That the Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.

3. That the Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

2

² The Authority does not receive money from the State Treasury and is; therefore, not subject to section 612 of the Administrative Code of 1929, 71 P.S. § 232.

4. That the Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That an original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 3101 Market Street, 2nd Floor, Philadelphia, PA 19104.

6. That a copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority's website at www.philapark.org/tld.

7. That the contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

THE PHILADELPHIA PARKING AUTHORITY

Joseph T. Ashdale Chairman (SEAL)

ORDER ADOPTED: February 27, 2012 ORDER ENTERED: February 27, 2012 **Certified:**

Alfred W. Taubenberger Vice-Chairman/Secretary (SEAL)

Annex "A"

§ 1005.114. Electronic testimony.

(a) Purpose and scope.

(1) In-person testimony is normally preferable to testimony by telephone or audio-visual means; however, there can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

(2) When the general rules of this subpart conflict with this section, this section controls.

(3) This section applies to the testimony of witnesses in enforcement actions.

(4) This section does not apply to proposed witnesses who are any of the following:

(i) Authority employees.

(ii) Parties to an enforcement action.

(iii) Employees of parties to an enforcement action.

(b) Scheduling of telephone or audio-visual testimony.

(1) The Authority or presiding officer may schedule, on its own motion, testimony by telephone or audio-visual means of a witness when it appears from the record that the witness is located at least 25 miles from the location at which the Authority or presiding officer will conduct the hearing, without regard to State boundaries.

(2) The Authority or presiding officer may schedule testimony by telephone or audiovisual means of a witness, at the request of one or more parties, when one of the following applies:

(i) The parties consent to the receipt of testimony by telephone or audio-visual means.

(ii) The witness is reasonably unable to testify in person due to employment, transportation, mobility, health reason, or other compelling problem.

(iii) The witness is a police officer within the definition of 234 Pa. Code Rule 103, offered for testimony regarding the impoundment of a taxicab or limousine, or vehicle acting as a taxicab or limousine.

(3) Only a witness scheduled to testify by telephone or audio-visual means, or identified prior to the taking of testimony in accordance with subsection (d), may testify by telephone or audio-visual means, and the testimony of each other witness shall be received in person.

(4) The Authority or presiding officer will promptly rule on a request that testimony be taken by telephone or audio-visual means after a reasonable attempt has been made to inform the parties of the request, the basis for the request, and the right of a party to object. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(5) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

(c) Procedures subsequent to scheduling.

(1) If a party moves to withdraw consent to the receipt of testimony by telephone or audio-visual means prior to the taking of testimony, the Authority or presiding officer will allow the withdrawal if it is found that the consent was not freely and knowingly given.

(2) An objection to the receipt of testimony by telephone or audio-visual means shall set forth the reasons in support thereof and shall be promptly communicated to the Authority or presiding officer and any opposing party, but may not be asserted subsequent to the taking of testimony.

(3) The Authority or presiding officer will promptly rule on objections to testimony by telephone or audio-visual means after a reasonable attempt to obtain the position of the other party. The basis for the objection, the position of the other party, if known, and the ruling will be documented on the record.

(4) A party may pursue an objection to telephone or audio-visual testimony at the hearing and shall set forth reasons in support thereof. If the objection is sustained, the Authority or presiding officer will reschedule the hearing at a later date, either in person or by telephone or audio-visual, in accordance with this part. If the objection is not sustained, the Authority or presiding officer may proceed with the hearing in accordance with this subpart.

(d) Hearing process.

(1) At the start of the hearing, the Authority or presiding officer will state on the record the time and telephone or audio-visual numbers at which the Authority or presiding officer initiates the contact with any party, witness, legal counsel or authorized agent who is to testify or appear by telephone or through audio-visual means. (2) The Authority or presiding officer will permit parties a reasonable opportunity to question other parties or witnesses testifying by telephone or audio-visual means for the purpose of verifying the identity of the parties or witnesses. Falsification of identity is prohibited.

(3) A party or witness not identified to the Authority or presiding officer and all other parties before the beginning of the testimony will not be permitted to testify by telephone or audio-visual. Testimony taken or given in violation of this subsection will be excluded from consideration.

(4) The oath or affirmation administered to parties or witnesses testifying by telephone or audio-visual means shall indicate that the parties or witnesses will not testify from documents that are not in the record.

(5) The Authority or presiding officer, the person testifying by telephone or audio-visual means, and all persons in the room in which the Authority or presiding officer is present while telephone or audio-visual testimony is presented must be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony pursuant to this section.



Philadelphia Parking Authority

3101 Market Street Philadelphia, PA 19104-2895 (215) 683-9600

May 7, 2012

The Honorable Silvan B. Lutkewitte, III Chairman Independent Regulatory Review Commission 333 Market Street 14th Floor Harrisburg, PA 17101

Dennis G. Weldon, Jr. General Counsel The Philadelphia Parking Authority 3101 Market Street Second Floor, West Wing Philadelphia, PA 19104-2895 Direct Line: 215.683.9630 Facsimile: 215.683.9619

E-Mail: dweldon@philapark.org

Re: Docket No. and Agency/ID No. 126-2 Proposed Rulemaking Philadelphia Taxicab and Limousine Regulations 52 Pa. Code § 1005.114 (Electronic Testimony) (Proposed)

Dear Chairman Lutkewitte:

The Philadelphia Parking Authority ("Authority") hereby submits its proposed rulemaking and regulatory analysis form to the Independent Regulatory Review Commission for review pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15). Also enclosed is the Authority's Proposed Rulemaking Order entered February 27, 2012 (preamble) and the "Face Sheet" required by 1 Pa. Code §13.12.

As you are aware, the Governor's Budget Office has determined that the Authority does not require a fiscal note as part of this proposed rule making pursuant to 71 P.S. §232, and has confirmed that position in a memorandum that is also enclosed.

The proposed regulation will permit witnesses to testify at administrative hearings by telephone or other audio-visual means, under certain terms and conditions. This form of remote testimony will not be available to Authority employees or the actual regulated party, but only non-party witnesses proposed by the Authority or the regulated party.

Due to the transient nature of many users of taxicabs and limousines it is often difficult or impossible to have those witnesses appear at administrative hearings. Many of these hearings relate to allegations of inadequate service levels by regulated parties, which is an issue central to the Authority's Legislative mandate. See 53 Pa. C.S. §

Honorable Silvan B. Lutkewitte, III May 7, 2012

Page....Two

5701.1. When members of the traveling public are not able to attend these administrative hearings the enforcement and defense of regulatory complaints becomes more challenging or even impossible.

The contact person is the undersigned and may be contacted at 215-683-9630.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours, The Philadelphia Parking Authority

Dennis G. Weldon, Jr.

General Counsel

DGW/pdm

Enclosures

cc: Joseph T. Ashdale Chairman Vincent J. Fenerty, Jr. Executive Director James R. Ney Director, TLD

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

ID Number:	126-2		
Subject:	Regulation to permit electronic testimony at administrative heari	ngs.	
	Philadelphia Parking Authority		
TYPE OF REG	ULATION		
X	Proposed Regulation	2012 MAY	
	Final Regulation with Notice of Proposed Rulemaking Omitted.	MAY -	REO
	Final Regulation	AM	RRC
	120-day Emergency Certification of the Attorney General	10: 24	Ĕ
	120-day Emergency Certification of the Governor		

FILING OF REPORT

Date Signature 5/7/12 Alijie Mennich 5/2/12 Jean Arp 5/2/12 Jean Arp 5/2/12 May Walmy 5/2/12 Juli Diff 5/2/12 Juli Diff 5/2/12 K Cooper 5/2/12 Samola Haven

Designation

HOUSE COMMITTEE (Ross) Urban Affairs

SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure

Independent Regulatory Review Commission

Attorney General

Legislative Reference Bureau