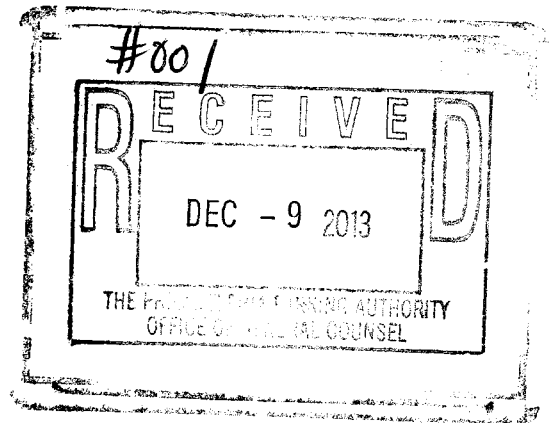




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December 6, 2013 3039

VIA E-MAIL AND FIRST CLASS MAIL

Philadelphia Parking Authority
Attn: Dennis Weldon, General Counsel
The Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19104

2013 DEC 13 AM 9:45

RECEIVED
IRRC

Re: **Proposed Regulation 126-6**
Philadelphia Taxicab and Limousine Regulation

Dear Mr. Weldon:

Attached to this letter are the comments of Black Point Taxi, LLC, Gabon Taxi, LLC, Lindros Taxi, LLC, Seedjam Taxi, LLC, Congo Taxi, LLC, Botswana Taxi, LLC, Australia Taxi, LLC, Kolara Trans, LLC, Gabon Taxi, LLC, Iverson Taxi, LLC, Morocco Taxi, LLC, Sudan Taxi, LLC, Kick Stand Trans, LLC, Two Phones Taxi, LLC, Toba Taxi, LLC, Senegal Taxi, LLC, Seedjam, Inc., Brasil Taxi, LLC, Narragansett Taxi, LLC, H-OP-KJVAI Cab Co., Ryder Cub Taxi, LLC, Eurostar Taxi, LLC, Togo Taxi, LLC, Barnes Taxi, LLC, Mahaffey Taxi LLC, Melo Taxi, LLC, Egypt Taxi, LLC, Housewives Taxi, LLC, Ethiopia Taxi, LLC, Schmidt Taxi LLC, Cambodia Taxi, LLC, RZA Cab Corp., Kingston Taxi, LLC, Fromage Taxi, LLC, Kolara Trans, LLC, Watson Taxi, LLC, New Zealand Taxi, LLC, Pier Taxi, LLC, Kenya Taxi, LLC, Vick Taxi, LLC, Gold Runner Taxi, LLC, Korea Taxi, LLC, Sri Lanka Taxi, LLC, Melo Taxi, LLC, Barkley Taxi, LLC, Zimbabwe Taxi, LLC, Mykonos Taxi, LLC and Sephardic Taxi, LLC, all collectively operating under the trade name Freedom Taxi (collectively, "Freedom Taxi"), on the Philadelphia Parking Authority's ("PPA") proposed regulation for taxicabs and limousines that was published in the Pennsylvania Bulletin on November 9, 2013. As you know, Freedom Taxi is a major stakeholder in the Philadelphia taxicab industry.

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Philadelphia Parking Authority
December 6, 2013
Page 2

Upon reviewing Proposed Regulation 126-6 (the "Regulation"), Freedom Taxi respectfully recommends that the Regulation submitted by the PPA to the Independent Regulatory Review Commission ("IRRC") be withdrawn by the PPA until such time as:

1. The PPA provides adequate notice for stakeholders to provide meaningful comments on the proposed Regulation, including the number of medallions that will be designated only for use on wheelchair accessible vehicles, versus the number of medallions that will have other special restrictions.
2. The PPA creates a more transparent bidding process by requiring all of the bids to be submitted on the same day and publishing a list of all of the bids submitted to the PPA, from highest to lowest bid, 24 hours before any of the sealed offers are accepted.
3. The PPA raises the amount of collateral required to bid on a medallion from \$5,000 to \$20,000, in addition to a letter of commitment or bond for 80% of the bid price.
4. The PPA assesses its legal authority to limit the number of medallions, of the 150 new taxicab medallions that will be issued by the PPA, designated only for use on wheelchair accessible vehicles.

Freedom Taxi is submitting these comments to highlight the significant issues with the Regulation as proposed. Freedom Taxi's comments begin with a discussion of the procedural defects of the Regulation, which include many of the same concerns that were raised in Freedom Taxi's comments on Proposed Regulation 126-5. Following a discussion of the procedural defects, namely the lack of adequate notice, Freedom Taxi's comments focus on specific sections of the proposed subchapter and how they will continue to promote corruptive practices in the medallion bidding process.

Freedom Taxi hopes to have an opportunity to work with the PPA in improving the Regulation and in gaining an understanding of the PPA's public interest goals that it hoped to accomplish through the Regulation.

Sincerely,

Brett A. Berman
On behalf of Freedom Taxi

COMMENTS OF FREEDOM TAXI

**Re: Regulation 126-6
Philadelphia Taxicab and Limousine Regulation Proposed
by the Philadelphia Parking Authority**

December 6, 2013

**COMMENTS OF FREEDOM TAXI
ON PROPOSED REGULATION 126-6 REGARDING
TAXICABS AND LIMOUSINES IN PHILADELPHIA**

I. Executive Summary

The Regulation should not be approved because the process by which the Philadelphia Parking Authority (“PPA”) developed Proposed Regulation 126-6 (the “Regulation”) does not comport with agency rulemaking procedures; there is not enough transparency in the bid-making process; and the PPA is not requiring a meaningful collateral commitment from bidders. Freedom Taxi respectfully requests that the Regulation not be approved by the Independent Regulatory Review Commission (“IRRC”) until:

1. The PPA provides adequate notice for stakeholders to provide meaningful comments on the proposed Regulation, including the number of medallions that will be designated only for use on wheelchair accessible vehicles, versus the number of medallions that will have other special restrictions.
2. The PPA creates a more transparent bidding process by requiring all of the bids to be submitted on the same day and publishing a list of all of the bids submitted to the PPA, from highest to lowest bid, 24 hours before any of the sealed offers are accepted.
3. The PPA raises the amount of collateral required to bid on a medallion from \$5,000 to \$20,000, in addition to a letter of commitment or bond for 80% of the bid price.
4. The PPA assesses its legal authority to limit the number of medallions, of the 150 new taxicab medallions that will be issued by the PPA, designated only for use on wheelchair accessible vehicles.

The comments begin by addressing the absence of meaningful data on the PPA’s proposed 10-year distribution schedule. The PPA has not explained why it will not be issuing all 150 medallions at once, despite the shortage of wheelchair accessible vehicles in Philadelphia. In addition, the Regulation states that only some of the 150 new taxicab medallions will be designated only for use on wheelchair accessible vehicles. However, the PPA has not announced how many of the 150 medallions will be designated for use on wheelchair accessible vehicles, and how many of the medallions will be issued with other special restrictions, or no restrictions at all.

Following a discussion of the procedural defects, Freedom Taxi’s comments focus on specific sections of the proposed subchapter and how they will continue to promote corruptive practices in the medallion bidding process. The PPA should create a more transparent bidding process by requiring all bids to be submitted on the same day and publishing a list of all of the bids submitted to the PPA, from highest to lowest bid, 24 hours before any of the sealed offers are accepted. Freedom Taxi also addresses whether the PPA has the legal authority to enact the

Regulation as proposed given that Act 119 does not give the PPA the authority to limit how many of the 150 medallions are restricted to wheelchair accessible vehicles only.

II. Inadequate Notice

As previously mentioned in Freedom Taxi's comments to Proposed Rulemaking Order 126-5, an agency's regulations are valid and binding only if they are: "(a) adopted within the agency's granted power, (b) *issued pursuant to proper procedure*, and (c) reasonable." Tire Jockey Serv. Inc. v. Dep't Env't Prot., 915 A.2d 1165, 1186 (Pa. 2007) (emphasis added). To be issued pursuant to proper procedure, a proposed rulemaking order must provide adequate notice to the affected public. Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 525 (1994). More specifically, agency rules should be clear and definite so that affected parties will have a clear understanding of the agency's interpretation of the law and be able to provide meaningful comment. Id. Agencies should not "promulgate vague and open-ended regulations that they can later interpret as they see fit, thereby frustrating the notice and predictability purposes of rulemaking." Nw. Youth Servs. v. Cwlth. Dep't of Pub. Welfare, 66 A.3d 301, 310 (Pa. 2013) (citations omitted). A regulation that is not promulgated in accordance with these requirements will be declared a nullity. Borough of Bedford v. Dep't of Env't Prot., 972 A.2d 53, 62 (Pa. Cmwlth. Ct. 2009).

Vague regulations do not promote transparency in the rulemaking process. The PPA has been authorized by the legislature through the act of July 5, 2012 (P.L. 1022, No. 119) ("Act 119") to issue a maximum of 15 certificates of public convenience and corresponding medallions for citywide call or demand service each year until 150 medallions have been issued. However, Act 119 does not state that the maximum number of certificates of public convenience and corresponding medallions must be distributed each year for the next 10 years. The PPA has decided on this 10-year distribution schedule without giving the public any insight into why it has decided that the maximum number of medallions should be issued each year. Why is the maximum number of medallions being issued each year? And if all 15 medallions are being issued each year, why are they not all being issued at once?

Freedom Taxi cannot provide meaningful comments until Freedom Taxi understands the PPA's rationale for this 10-year distribution schedule. The immediate demand for wheelchair accessible vehicles suggests that all 150 medallions should be issued at once, instead of over 10 years. Currently, there is a fleet of just seven wheelchair accessible vehicles in Philadelphia, which has a backlog of work that has eliminated the fleet's ability to provide an "on-demand" service. Potential users of these vehicles must make reservations at least 24 hours in advance.¹ The only way to increase availability and improve response time is to introduce a larger quantity of medallions.

¹ In the comments Freedom Taxi submitted on Friday, November 22, 2013 to Proposed Rulemaking Order 126-5, Freedom Taxi highlighted why fifteen medallions a year is not enough to fulfill the demand for wheelchair accessible vehicles in Philadelphia. The comments focused on the number of wheelchair accessible taxicabs in comparable cities. For example, New York City's Manhattan borough has a population of 1.69 million. Philadelphia has a population of 1.548 million. Despite the similarity in these statistics, Philadelphia's wheelchair

In addition, the Regulation's vagueness surrounding how many of these 150 medallions will be designated only for use on wheelchair accessible vehicles is troublesome. In the background and discussion section of the Regulation, the PPA states that: "The Authority has been authorized by the Legislature through the act of July 5, 2012 . . . to issue up to 150 new taxicab medallions over the next 10 years, *including* medallions designated only for use on wheelchair accessible vehicles." This discretionary language suggests that not all of the medallions will be designated only for use on wheelchair accessible vehicles. However, the PPA does not provide any guidance on how many of the 150 new taxicab medallions will be designated for wheelchair accessible cabs only. Service providers will not be able to adequately equip their vehicles without knowing the types of medallions they will be able to bid on in advance.

Section 1013.33 of the Regulation states: "sales of medallions will be through sealed public bids and that medallions *may* be sold with special restrictions, such as the need to be attached to a wheelchair accessible vehicle." However, the Regulation does not clarify the types of special restrictions that the Regulation contemplates, or whether some of the medallions will be issued without any restrictions. It is essential that agencies give detailed notice of their plans to the public so that comments can be directed at the agency's actual proposals. The Regulation falls short of providing the public with adequate notice of the PPA's proposed rulemaking. As such, Freedom Taxi recommends that the Regulation be amended to include the necessary details to provide the public with the proper information to provide meaningful comment.

III. Substantive Deficiencies

In addition to the procedural defects outlined above, there are a number of substantive deficiencies with the Regulation. Specifically, the PPA needs to reform the bidding process to (1) ensure that it is as transparent as possible and (2) guarantee that each bidder is able to meet the financial obligations that accompany submitting a winning bid.

1. Bidding Process

The Regulation does not have enough procedures in place to prevent corruptive bidding practices. As it reads now, the Regulation requires bids to be sealed. The Regulation also requires bidders to submit a signed verification stating that they have not engaged in corruptive bidding practices. However, this is not enough. Instead, the PPA should require that all bids be submitted on the same day. Twenty-four hours after all bids have been submitted, the PPA should publish a list of all of the bids on its website, from highest to lowest bid, before any medallion sales are finalized. This quick turnaround time will prevent the PPA from sitting on any bids and negotiating with any bidders. The goal here must be complete transparency.

accessible vehicle program pales in comparison to Manhattan's program. Manhattan has 233 wheelchair accessible vehicles that are centrally dispatched by the city through a contracted accessible dispatch. Currently, Philadelphia has a fleet of 7 wheelchair accessible vehicles, with no centralized dispatch system.

In addition, in the signed verification that bidders must submit to the PPA, bidders should be required to state that they understand the demands of owning and operating a wheelchair accessible vehicle. Bidders should also have to state that they will conform their vehicles to the PPA's standards for wheelchair accessible vehicles, and their drivers will attend special training programs to operate these vehicles and attend to passengers. Wheelchair accessible vehicles come with a new set of challenges, and bidders need to agree to these new responsibilities.

2. Deposits for Bids

In addition, the collateral required from bidders must be increased. Five thousand dollars will not pass muster. Market value for these medallions is now upwards of \$500,000. Freedom Taxi suggests that the PPA raise the amount of collateral required to bid on a medallion from \$5,000 to \$20,000, in addition to requiring a letter of commitment or bond for 80% of the bid price. Chicago also requires \$20,000 to be submitted with each bid. Further, wheelchair accessible vehicles are going to be a larger financial burden on bidders than non-accessible taxicabs. If bidders are not going to be able to carry through on their bid, then they should not be awarded a medallion by the PPA.

IV. Legal Authority

In addition to the aforementioned deficiencies, the PPA has exceeded its statutory authority through the proposed Regulation. The Regulation states that "[t]he Authority has been authorized by the Legislature through the act of July 5, 2012 (P.L. 1022, No. 119) ("Act 119") to issue up to 150 new taxicab medallions over the next 10 years, *including* medallions designated only for use on wheelchair accessible vehicles." The word "including" suggests that the PPA has interpreted Act 119 to mean that only some of the certificates of public convenience and corresponding medallions must be designated for use on wheelchair accessible vehicles only. To support this proposition, the PPA cites to 53 Pa.C.S. § 5711(c)(2.1). However, § 5711(c)(2.1) states that "no more than six certificates of public convenience [may be issued] for non-citywide call or demand service." Clearly, this provision does not relate to whether all 150 medallions must be designated for use on wheelchair accessible vehicles only.

Instead, the PPA ignores the relevant sections of the authorizing statute. Specifically, § 5711(c)(2)(i) states that the PPA is authorized to issue, "[s]ubject to the provisions of subparagraph (ii), a maximum of 1,600 certificates of public convenience corresponding medallions for citywide call or demand service and an additional 15 certificates of public convenience and corresponding medallions restricted to wheelchair-accessible taxicab service." Based on this provision, there can be a maximum of 1,600 medallions that are not restricted to wheelchair-accessible taxicab service. Subparagraph (ii) provides for the issuance of 15 additional medallions to be sold annually for the next 10 years, for a total of 150 medallions slated for wheelchair accessible taxicabs in Philadelphia. This intention is further evidenced by the House Committee on Appropriations Fiscal Note, which states that Act 119 was intended to "add procedures and regulations for *the operation of wheelchair accessible vehicles (WAV) taxicabs* in Philadelphia and to clarify certain existing provisions." Accordingly, the PPA has exceeded its legal authority through the promulgation of the proposed Regulation.

V. Conclusion

The Regulation fails to make enough changes to the medallion bidding process. To promote transparency and equality among bidders, the following changes must be made:

1. The PPA should revise the Regulation to provide adequate notice to stakeholders regarding the number of medallions that will be designated only for use on wheelchair accessible vehicles, and the other types of special restrictions that may be attached to the taxicab medallions.
2. The PPA must require all bids to be submitted on the same day and the PPA must publish a list of all the bids submitted, from highest to lowest bid, 24 hours after receiving the last bid.
3. The PPA should raise the amount of collateral required to bid on a medallion from \$5,000 to \$20,000, in addition to requiring a letter of commitment or bond for 80% of the bid price.
4. The PPA must include in the Regulation its legal authority for limiting the number of medallions, of the 150 new taxicab medallions that will be issued by the PPA, designated only for use on wheelchair accessible vehicle.

Freedom Taxi looks forward to working with the PPA in revising the Regulation.