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April 7, 2014

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

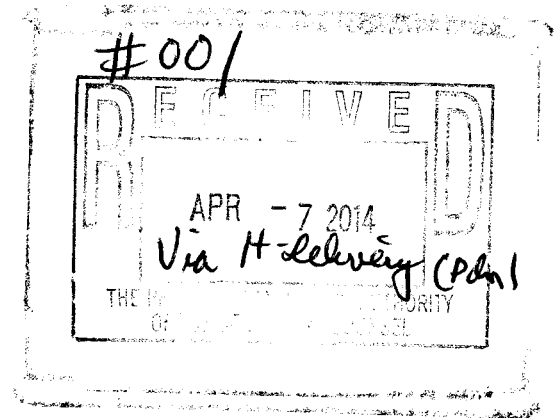
Re: **Proposed Regulation 126-8**
Philadelphia Taxicab and Limousine Regulation – Taxicab Safety Cameras

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

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limousines that was published in the Pennsylvania Bulletin on March 8, 2014. As you know, Freedom Taxi is a major stakeholder in the Philadelphia taxicab industry.

Upon reviewing Proposed Regulation 126-8 (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recommends that the Regulation submitted by the PPA to the Independent Regulatory Review Commission ("IRRC") be withdrawn by the PPA until such time as: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, to include the best practices of taxi camera design and implementation as currently used in other U.S cities.
2. Pursuant to the Pennsylvania Regulatory Review Act ("RRA"), 1 Pa.Code. section 301 *et seq.*, the PPA explains why it did not consider less burdensome regulations, including, for example, the final implementation of external emergency lights.
3. Pursuant to the RRA, the PPA explains how the Regulation will avoid conflicting with existing PPA regulations, including, for example, the requirement that all taxicabs install and maintain partitions or shields between the driver and passenger areas.
4. Pursuant to the RRA, the PPA provides a description of the data it relied on to meet the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research for the basis of the Regulation.
5. The PPA assesses its legal authority to mandate the installation of cameras that invade the privacy of drivers, passengers, and bystanders under the Fourth and Fourteenth Amendments to the Constitution.

Freedom Taxi is submitting these comments to highlight the significant issues with the Regulation as proposed. Freedom Taxi is, and has always been, dedicated to providing a safe work and transportation environment for its drivers and passengers. Freedom Taxi supports any regulation that prevents taxicab crime. However, the Regulation, as proposed, reacts to crime instead of preventing it. Furthermore, the technology proposed by the Regulation is untested and potentially prohibitively expensive.

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



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Sincerely,

Brett A. Berman

On behalf of Freedom Taxi

COMMENTS OF FREEDOM TAXI

**Re: Regulation 126-8, Taxicab Safety Cameras
Philadelphia Taxicab and Limousine Regulation Proposed
by the Philadelphia Parking Authority**

April 7, 2014

**COMMENTS OF FREEDOM TAXI
ON PROPOSED REGULATION 126-8 REGARDING
TAXICABS AND LIMOUSINES IN PHILADELPHIA**

I. Executive Summary

Proposed Regulation 126-8, Taxicab Safety Cameras (the “Regulation”), should not be approved as it is written because the process by which the Philadelphia Parking Authority (“PPA”) developed it does not comport with agency rulemaking procedures; it does not adequately or efficiently protect taxi drivers from the dangers they face; it conflicts with other PPA taxi regulations; and it does not sufficiently consider the best practices and/or cost-benefit analyses of the camera system’s implementation and maintenance. 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, to include the best practices of taxi camera design and implementation as currently used in other U.S cities.
2. Pursuant to the Pennsylvania Regulatory Review Act (“RRA”), 1 Pa.Code. section 301 *et seq.*, the PPA explains why it did not consider less burdensome regulations, including, for example, the final implementation of external emergency lights.
3. Pursuant to the RRA, the PPA explains how the Regulation will avoid conflicting with existing PPA regulations, including, for example, the requirement that all taxicabs install and maintain partitions or shields between the driver and passenger areas.
4. Pursuant to the RRA, the PPA provides a description of the data it relied on to meet the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research for the basis of the Regulation.
5. The PPA assesses its legal authority to mandate the installation of cameras that invade the privacy of drivers, passengers, and bystanders under the Fourth and Fourteenth Amendments to the Constitution.

II. Inadequate Notice

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).

Freedom Taxi cannot provide meaningful comments until it understands the PPA's rationale for requiring the safety camera system it proposes. Freedom Taxi considers the safety of its drivers and passengers to be of paramount concern. However, Freedom Taxi strongly believes that any regulations that address driver and passenger safety should focus on violence prevention, rather than criminal apprehension. The camera monitoring system proposed by the Regulation is a reactive measure — it is intended to aid law enforcement officials in arresting an offender after he or she has committed a crime. A preventative safety measure — intended to thwart an offense before it has begun — is ultimately more desirable because it provides greater safety protection to taxi drivers and passengers.

Passenger-inflicted violence continues to be a serious occupational hazard for taxicab drivers. Between 1980 and 2009 an average of 38 taxicab drivers were murdered each year in the United States during work.¹ In Philadelphia, between May and August 2013, at least four taxi drivers were assaulted on the job, two of them fatally.² Mark Longo, the director of information for the greater Philadelphia, Chicago and New York taxi associations has stated that "[i]n no other city [than Philadelphia] is the frequency and more so the level of violence against taxi drivers so prevalent."³ Taxi drivers face a high risk of violence at work because they work: (1) with the public; (2) in largely cash transaction; (3) alone; (4) often at night; and (5) in some high-crime areas.⁴ A study of violent crimes against taxicab drivers found that: (1) 94% of the attacks occur when the driver is inside the cab; (2) 85% of the fatal injuries are gunshot wounds; (3) 82% of the assaults occur at night; (4) 66% of the assailants are under twenty years old; (5)

¹ Cammie K. Chaumont Menendez, *et al.*, Effectiveness of Taxicab Security Equipment in Reducing Driver Homicide Rates, American Journal of Preventive Medicine, June 11, 2013.

² Christine Fisher, Taxi Drivers Want Cameras, Other Safety Measures, PlanPhilly, September 19, 2013.

³ *Id.*

⁴ Menendez, Effectiveness of Taxicab Security Equipment in Reducing Driver Homicide Rates, *supra*, 2-3.

47% of the assailants act alone; and (6) 25% of the assailants act outside of the cab.⁵ For these reasons, Freedom Taxi advocates the implementation of stronger preventative measures to forestall these attacks from occurring.

Taxicabs in Philadelphia are already required to have the most effective preventative safety device to prevent violence against drivers: cabin partitions or shields. Taxicabs must be equipped with a protective shield which completely separates the front seat from the back seat. 52 Pa.Code. § 1017.5(b)(12). The shield must be see-through and bullet-resistant. Id. A landmark study on taxi driver safety in Baltimore found that shields are the most effective crime deterrent.⁶ The study concluded, “The percentage of taxis that are shielded is the single most important factor that determines how many assaults occur in a year. The benefits of shields that come in the form of reduced injury and robbery losses substantially exceed the costs of shield installation as shown by the benefit-cost analysis.”⁷ Finally, the study recommended that “shields be implemented in cities with population and crime characteristics similar to those experienced in Baltimore”⁸

Freedom Taxi is concerned that compliance with the Regulation would be impossible with the current configuration of the required (and necessary) taxicab shield. The Regulation proposes a new section titled, “Safety camera requirements,” which states that “the entire interior of the taxicab, including the faces of all occupants” must be recorded at all times that the cab’s engine is running. Proposed § 1017.74(c),(f)(2). Freedom Taxi has consulted with various taxicab safety-product experts, who have confirmed that it would be very difficult, if not impossible to create a 360 degree view of the interior of the cab with the shield in place.⁹ However, to amend or withdraw the shield requirement would dispense with one of the most proven taxicab violent crime deterrents. Freedom Taxi cannot support the removal of the shield requirements from the regulations.

⁵ Id.

⁶ John R. Stone and Daniel C. Stevens, The Effectiveness of Taxi partitions: The Baltimore Case, North Carolina State University, June 1999. The study found a 56% reduction in taxi assaults in the 12 months following the shield ordinance. Id. at 15.

⁷ Id. at 41.

⁸ Id.

⁹ Perhaps this is why many cities require either a shield or a camera to be installed in each taxicab. Requiring both becomes difficult from financial and an engineering viewpoints.

Freedom Taxi has a real concern regarding the technological and financial viability of the optical system proposed by the Regulation. Specifically, a six-channel camera would be needed to feed a 360 degree view from the cab. Furthermore, an external modem would be required to feed the image from the mobile data terminal inside each cab. As the Regulation contemplates, multiple cameras per cab may be needed to capture the entire interior of the vehicle. *See* Proposed § 1017.74(f). More cameras create more data which needs to be compressed in order to be processed and stored efficiently. Furthermore, under the regulation, there will be a need to continually monitor the health of the cameras. Video systems of such complexity require frequent updates and troubleshooting in addition to the fact that cameras mounted in the passenger compartment of the vehicle would be subject to accidental and/or purposeful tampering and/or destruction. Indeed, a case study of taxicab cameras in San Francisco found that the utility of the cameras in aiding police investigations after a crime was committed were significantly hampered “due to technical issues with the cameras that resulted in a high percentage (more than 50%) in which no image could be recovered from the camera following an attack. Spot checks conducted by the Police Department in late 2005 revealed that many cameras had become non-functional.”¹⁰

These technical issues are illustrative of the PPA’s overarching failure to study the taxicab camera systems in other cities to glean best practices for the implementation of such a system in Philadelphia. Before the city of Winnipeg implemented its taxicab camera system, it took measures to ensure the efficacy and viability of the program. According to a study regarding the Winnipeg taxicab camera system, “Information from other jurisdictions was assessed, vendors were invited to demonstrate their camera systems, and the taxicab industry was involved in the evaluation process. Extensive consultations were held with the Winnipeg Police Service to ensure the camera system would be an aid in solving crime and an effective deterrent in reducing taxicab crime. Policies and procedures were drafted to ensure customer privacy and restricted access to camera images.”¹¹ Moreover, after the system was implemented, “a training program was developed to inform taxicab drivers on the features of the camera system. All 1600 registered taxicab driver’s license holders were directed to a training session at the Taxicab Board office over the course of [a] year. Any applicant for a taxicab driver’s license renewal [had to] prove he or she ha[d] attended the camera training session.”¹²

¹⁰ Menendez, Effectiveness of Taxicab Security Equipment in Reducing Driver Homicide Rates, *supra*, 16.

¹¹ Lou Harries and Jerry Kozubal, Camera effective in reducing taxicab crime, 17th Annual International Conference of the International Association of Transportation Regulators, September 2004.

¹² Id.

By contrast, with regards to the Regulation, none of these steps appear to have been taken. The RRA requires the PPA to provide the data which serves as the basis for the regulation. In response, the PPA evades the instruction and makes reference to an attachment which “detail[s] [the] anticipated costs to relevant industry members.” Regulatory Analysis Form, Taxicab Safety Camera, 126-8, February 25, 2014. Clearly, the PPA has not collected or reviewed any data on which to base the Regulation, notwithstanding the fact that many studies have been published regarding the utility and efficacy of taxicab cameras in different cities. Likewise, in its Regulatory Analysis Form, the PPA states, “Owners will be economically impacted in the initial amount of approximately \$1,510, being the cost to acquire, install and operate the safety camera system and then approximately \$240/year for operational and maintenance costs.” Regulatory Analysis Form, Taxicab Safety Camera, 126-8, February 25, 2014. However, the PPA does not explain how it arrived at this figure, nor does it provide the breakdown of those costs. The PPA states that taxicab camera technology exists and is in use in many other cities; however, it appears that none of those systems are as complex and demanding as the system proposed by the Regulation. The technology the Regulation would require is unproven and expensive to acquire and maintain. It is clear that the PPA has not sufficiently studied the existing camera monitoring systems in other cities and has therefore failed to propose a realistic and efficient system for Philadelphia. Until such time that it does, the Regulation should not be approved.

The RRA also requires the submitting agency to “[i]nclude 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.” 1 Pa.Code. § 305(a)(12). In response to this instruction, the PPA replies, “No other alternatives were considered.” Regulatory Analysis Form, Taxicab Safety Camera, 126-8, February 25, 2014. If the PPA were to consider alternatives, it would find that less burdensome acceptable alternatives do exist and are more practical. In Proposed Rulemaking Order 126-7, the PPA suggested the installation of a distress button in all cabs, which, if pressed, would activate flashing distress signal lights on the exterior of the vehicle. This proposal was withdrawn on February 27, 2014 due to concerns that its implementation would violate the Pennsylvania Department of Transportation (“PennDOT”) Vehicle Code which only permits certain vehicles to use flashing lights. *See* 67 Pa. Code. § 15.2. Emergency lights, unlike cameras, help to stop a crime while it is being committed by alerting surrounding law enforcement personnel that a crime is occurring. The proposed cameras, on the other hand, would primarily be used to apprehend a suspect after he or she has committed a crime in a cab. There is no evidence that prior to withdrawing Proposed Rulemaking Order 126-7, the PPA asked PennDOT to revise its Vehicle Code to allow cabs to use flashing lights.

Flashing emergency lights would be a less burdensome and more effective crime prevention measure and should be reconsidered by IRCC before it approves the Regulation.¹³ Freedom Taxi supports a renewed regulation to introduce flashing emergency lights in all taxicabs.

III. Substantive Constitutional Concerns

In addition to the procedural defects outlined above, Freedom Taxi is concerned that the Regulation as written would violate the Fourth and Fourteenth Amendment rights of Philadelphia's citizens.

In Nevada, before the Taxicab Authority installed cameras in taxicabs, the state Attorney General was asked to provide an opinion regarding the constitutionality of adopting that measure. The Nevada Attorney General ("AG") found that pursuant to the Fourth Amendment, an individual does have a right to privacy in a taxicab.¹⁴ The AG noted that several courts, including the United States Supreme Court, had concluded that there is an expectation of privacy in a taxicab. See Katz v. U.S., 389 U.S. 347, 352 (1967) ("No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment.") (emphasis added); U.S. v. Santiago, 950 F.Supp. 590, 598 (S.D.N.Y. 1996) ("[A] passenger in a taxicab may exclude others from the cab, as he has hired the cab for his exclusive use for the duration of the trip. . . . Thus, defendant has established a Fourth Amendment interest in the search and seizure at issue in this stop."); Chapa v. Texas, 729 S.W.2d 723, 728 (Tex.Ct.App. 1987) ("[Chapa] exercised a significant degree of control over the taxicab. As a presumptively paying fare he could determine its destination for the duration of his presence therein. Moreover, though lacking ownership or possessory interest in the cab, [Chapa] and his companions could nevertheless exclude others from it during their ride."); see also United States v. Woodrum, 202 F.3d 1, 6 (1st. Cir. 2000); United States v. Sutherland, 891 F.Supp. 658, 662 n.3 (D.Me. 1995); Massachusetts v. Hooker, 755 N.E.2d 791,

¹³ The Regulation requires cabs to transmit the video feed to the taxi's dispatcher if the driver presses the distress button required by 52 Pa.Code. § 1017.24(d)(8). There is no real substantive discussion in the regulation with respect to the costs and feasibility of linking the operation of the cameras and their wireless transmissions to a panic button. Moreover, there is no real analysis of the costs and processes for the PPA and/or the dispatchers for monitoring the cameras in each taxi.

¹⁴ Christine M. Guerri-Nyhus, Attorney General Nevada Department of Justice Opinion Regarding the Constitutionality of Using Cameras in Taxicabs, October 5, 2005.

792 (Mass. 2001); Bates v. Maryland, 494 A.2d 976, 980 (Md. 1985). Ultimately, the AG opined that so long as the camera was only activated after the taxi driver had pressed the panic button, “the reasonable intrusion into the passenger’s Fourth Amendment privacy rights would likely be found acceptable.”¹⁵

Under the Regulation, “The safety camera system must be in operation during the entire time the vehicle’s engine is running.” Proposed § 1017.74(c). The continual monitoring of each and every passenger in a Philadelphia taxi raises considerable Fourth Amendment concerns that must be addressed before the Regulation is adopted. Furthermore, the Regulation requires the cameras to capture “[i]mages on the exterior of the taxicab, viewed from the interior of the taxicab. For example, the safety camera system should capture the image of a person who attempts to commit an act or [sic] robbery against a driver.” Proposed § 1017.74(f)(2). Filming the exterior of the cab raises significant Fourth Amendment issues especially when cabs pick up and/or drop off passengers on private property. During those times, under the Regulation, a direct video feed of the passenger’s private property is being transmitted to a state agency. This potential infringement into the privacy rights of Philadelphia’s citizens merits further analysis before the Regulation is approved.

IV. Conclusion

Freedom Taxi supports effective safety regulations for taxi drivers and passengers, including the installation of cameras in cabs. However, the PPA has not adequately shown that it has sufficiently considered the viability of the camera system it proposes, especially in light of other existing safety regulations and less burdensome alternatives. Furthermore, the PPA has not demonstrated a proficiency with taxi camera systems or the costs associated with implementing and maintaining them. Finally, the Regulation, as written likely implicates Fourth Amendment privacy concerns which warrant further analysis. As such, the following steps and changes must be made:

1. The PPA should revise the Regulation to reflect realistic camera system standards based on existing and proven technology. The taxi industry should be invited to participate in the evaluation of presentations made by camera industry professionals. The PPA should glean best practices from current taxi camera systems in use in U.S. cities.

¹⁵ Id.

2. The PPA should revise the Regulation to ensure it is feasible to implement given existing safety regulations, including, shield partitions.
3. The PPA should revise the Regulation to ensure that there are no less burdensome alternatives that could be implemented in place of the proposed multi-camera system.
4. The PPA should revise the Regulation to include training on the camera system for taxi drivers and owners, as well as law enforcement officials.
5. The PPA should ask the Pennsylvania Attorney General or an independent legal entity to conduct a review of the constitutionality of the Regulation.

In conclusion, Freedom Taxi supports a solution that provides the maximum amount of safety to the drivers and to the riding public. As discussed above, based on the current technology available for taxi cameras, the proposed camera regulation will not allow for cameras that meet the requirements of the proposed regulation while keeping the required partitions. As a result, Freedom Taxi asks that the regulations be revised to allow for either a safe partition system or a camera system that is well reasoned. The choice between cameras and partitions should be up to the individual taxi owner to make. Moreover, Freedom Taxi continues to support the introduction of a regulation requiring a trouble light on every taxi in the City. Specifically, Freedom Taxi wants to continue to prevent crime, not simply tape a crime that has already occurred. The proposed regulation should be amended to allow for such a choice.

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