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March 16, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Proposed Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 to Reduce Barriers to Entry for Passenger Motor Carriers and to Eliminate Unnecessary Regulations Governing Temporary and Emergency Temporary Authority
Docket No. L-2015-2507592**

Dear Secretary Chiavetta,

This Firm represents the following passenger motor carriers (the "Carriers"), all of which hold paratransit operating authority and some of which hold call or demand, limousine or group and party (more than 15 passengers) operating authority from the Pennsylvania Public Utility Commission (the "Commission"):

- Suburban Transit Network, Inc. t/a TransNet
- Willow Grove Yellow Cab Co., Inc. t/d/b/a Bux-Mont Yellow Cab and t/d/b/a Bux-Mont Transportation Services Co.
- Easton Coach Company t/a Norristown Transportation Co.
- Tri County Transit Service, Inc.
- Bucks County Transport, Inc.

On behalf of the Carriers, this Firm offers comments in response to the Proposed Rulemaking docketed by the Commission at L-2015-2507592, published in the Pennsylvania Bulletin at 46 Pa.B. 9. The Proposed Rulemaking either should be withdrawn, or at a minimum significantly modified, for the following reasons: (1) the proposed regulations would eliminate the benefits derived from application of the current standards, (2) the proposed regulations would discourage operational investment and greater efficiencies encouraged by the General Assembly and by a sister Commonwealth agency, (3) the proposed regulations would have a detrimental effect on



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sister agency programs funded by the General Assembly which are intended to improve the environment, (4) the proposed regulations are incomplete, rendering them incapable of rational implementation and (5) the proposed regulations attempt to deregulate the passenger motor carrier industry without proper legislative authority. These arguments are addressed in greater detail below.

1. THE BENEFITS OF UPHOLDING CURRENT STANDARDS

A primary purpose of the current regulatory framework is to ensure that all segments of the riding public have access to reliable, safe and affordable transportation. *See* 66 Pa. C.S. § 1103(a) (a certificate of public convenience will only be granted were the commission finds “such certificate is necessary or proper for the service, accommodation, convenience or safety of the public”). Allowing the unlimited entry of new carriers into the market will severely undermine the ability of established carriers to maintain the level of service they currently offer.

Unlike airline travel, which may be viewed as a luxury option for those who can afford it, ground transportation must be available to allow seniors and those with disabilities to get to appointments, go shopping or engage in recreational activities that they could not attend without a reliable, stable and affordable transportation system. The further one goes from urban centers which offer alternative methods of transportation, the greater the need for stable, reliable carriers which serve all segments of the riding public, and do not “cherry pick” only the most profitable trips. Opening the spigot and allowing a limitless number of carriers each to siphon off a portion of the rides currently provided by established carriers will weaken those existing carriers. Offering additional opportunities for new entrants should not be accomplished at the expense of responsible carriers with nearly unblemished records of serving the general public. There are sound public policy reasons justifying the current entry requirements outside of Philadelphia, which help ensure that the less affluent riding public has continued access to convenient forms of transportation.

The existing regulatory scheme is not so rigid as to be insurmountable. There is no limit on the number of certificates the Commission may issue. This is not a “medallion” system which artificially sets/limits the number of vehicles on the street in a particular geographical area (for instance, Philadelphia). The existing regulations do, however, require that applicants demonstrate that granting a certificate will help serve segments of the public which contend they will support, and could utilize, an applicant’s services. *See* 52 Pa. Code § 41.14 (requiring a common carrier applicant to demonstrate that approval of the application will serve a useful public purpose, responsive to a public demand or need). They need not call upon witnesses from every town, township and borough, so long as they can display an adequate representative showing. *See Purolator Courier Corp. v. Pennsylvania Public Utility Commission*, 51 Pa.



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Commw. 377, 414 A.2d 450 (1980); *Modern Transfer Co. v. Pennsylvania Public Utility Comm'n*, 179 Pa. Super. 46, 115 A.2d 887 (1955). This regulatory scheme provides at least some assurance that new applicants will serve geographical areas which may not be adequately served. Moreover, applicants which begin to serve in a smaller area are not precluded from seeking a larger service territory after establishing an initial base of operations. Successful carriers often file amendments expanding their geographical territories or expanding the type of service they provide, based on demonstrated need and a record of sound operations.

The Commission's proposed regulation is based on the proposition that the current system is complex, costly and time consuming. Yet no statistical analysis is offered to substantiate that conclusion. For instance, the Commission's internal system for processing applications already has been streamlined in the past 24 months by delegating more responsibility to staff, which has reduced the amount of time necessary to grant certificates in uncontested applications. How has the average time and expense for obtaining a certificate been affected, and are the Commission's observations about the burdens of the application process directed at the current system or the system as previously administered?

The current application process also could be simplified without the need for the proposed regulation if greater attention were paid to the intended geographical scope of an application before it is filed. When obtaining application materials and instructions, some applicants apparently are led to believe that seeking statewide authority is the most efficient way to proceed. Frequently, however, statewide applications attract a raft of protests, which must be resolved before the application moves forward. Once a dialogue is opened with protesting parties, many applicants will disclose that they only wanted authority in a limited geographical area, even if that were several cities, townships or counties. As discussed below in Section 4, the issue of geographical scope still may need to be addressed under the proposed regulations, and if that is the case, it may be beneficial to provide greater assistance to "small" applicants during the pre-filing process if the goal is to achieve greater administrative efficiency.

2. ADVERSE IMPACT ON OPERATIONAL INVESTMENT AND EFFICIENCY

The current entry requirements encourage common carriers to provide reliable, affordable service to customers while continuing to invest in their operations. Paratransit carriers, in particular, have made significant investments in upgrading their reservation and accounting systems in the past three years in order to comply with PADOT mandates applicable to participation in Pennsylvania's shared ride program for seniors. To the extent that the proposed regulations will place dozens of new certificate holders on the road, adoption of the proposed



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regulations in their current form will discourage carriers from participating in such programs going forward.

By way of background, Act 44 of 2007 established new provisions within the Public Transportation Law, and added 74 Pa.C.S. Chapter 15 as an entirely new chapter within the Public Transportation Law, Act No. 26 of 1991, providing state financial assistance, including grants, for various public transportation programs, activities and services, including reimbursement of capital expenditures for capital and asset improvements. 74 Pa. C.S. §1506 established a new funding source, the Public Transportation Trust Fund, for state financial assistance for public transportation programs, activities and services. Section 2002 of the Administrative Code of 1929, 71 P.S. §512 provides that it shall be the power and duty of PADOT “(2) to develop programs designed to foster efficient and economical public transportation services in the State”; and “(6) to coordinate the transportation activities of the Department with those of other public agencies and authorities.” 74 Pa.C.S. §1504(a) then authorized PADOT to provide financial assistance for the public transportation purposes and activities enumerated in Chapter 15.

Against this backdrop, the County Coordinators for Pennsylvania’s Shared Ride Program in the Counties of Montgomery (Suburban Transit Network, Inc. t/a TransNet) and Bucks (Bucks County Transport, Inc.) have received grant money in excess of \$300,000 to install software necessary to participate in PADOT’s Ecolane system, which is a routing and scheduling program designed to achieve greater operational efficiency. Significant amounts of time were expended by the carriers implementing this program.

In the case of TransNet, implementation of Ecolane nearly doubled operating efficiency, from approximately 1.14 trips per passenger per hour to approximately 2.13 trips per passenger per hour. It is estimated that each 1% reduction in Shared Ride trips would reduce revenues by approximately \$80,000, because the same number of vehicles would have to make the same number of runs and operate the same number of hours in order to serve the remaining passengers. This would have the effect of eroding the additional efficiency which recently has been achieved through Ecolane. At some point, this also would result in a reduction in the number of vehicles on the road, which would be replaced by less efficient vehicles (both economically and environmentally, as discussed below in Section 3).

By flooding the marketplace with new entrants, the PUC will be dissipating the rider base that justified the PADOT and carrier investments. Those who participated in implementing the Ecolane system now would be penalized for having done so, and will be wary of making future investments which have little chance of being recouped over time. Equally important, the



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proposed regulation would have the effect of undercutting the objectives authorized by the Legislature and established by PADOT with the Ecolane system and the resulting efficiencies which have been achieved.

3. DELETERIOUS ENVIRONMENTAL IMPACT

The proposed change will result in more vehicles with fewer passengers riding in each, thereby increasing the amount of greenhouse gas emissions caused by the transportation industry. Shared ride programs offer not only operating efficiencies, but also environmental efficiency. Equally important to the use of shared-ride programs is the type of vehicle used to render service.

Chapter 27 of Title 58 of the Pennsylvania Consolidated Statutes establishes the Natural Gas Energy Development Program (NGEDP) to award grants to promote the use of domestic natural gas as vehicle fuel in Pennsylvania. The Pennsylvania Department of Environmental Protection (DEP) has deployed the NGEDP to support a portion of the incremental cost for the purchase of natural gas vehicles. *See* 2013, 2014 and 2015 Annual Reports of Pennsylvania Natural Gas Energy Development Program administered by DEP, <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-99849/0120-RE-DEP4436%20%20%202013%20NGV%20and%20ESF%20Annual%20Report.pdf> ; <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-103238/0120-RE-DEP4461.pdf> ; <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12734> (last accessed on March 14, 2016). In the case of TransNet and BCT, nearly \$400,000 has been spent in Compressed Natural Gas (CNG) conversions since 2011, and another \$1.5 Million has been spent purchasing CNG vehicles.

Paratransit operators, often using “green” vehicles, are able to fill most available seats, thereby reducing highway pollution. For instance, TransNet has made substantial investment in sustainability initiatives, and already operates 10 Compressed Natural Gas vehicles in its fleet, with seven more vehicle conversions in the pipeline. During 2014, TransNet was able to reduce its carbon footprint by 58,476 pounds of CO₂ by utilizing the 10 CNG vehicles, with a resulting 28% reduction in CO₂ emissions. Similarly, since 2011, Bucks County Transport has either converted or purchased 16 such vehicles.

The ridership “pie” is only so big; if riders are siphoned off to other carriers, this often results in each vehicle being operated with fewer riders. In an era in which there is greater recognition of the benefits of group transportation, putting more vehicles with fewer occupants on the road is



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precisely the opposite of good policy. Putting less efficient vehicles with a greater carbon footprint back on the road defeats the legislative and DEP initiatives.

4. DEFICIENCIES IN THE PROPOSED REGULATION

Assuming, for argument's sake, that the proposed regulation will be adopted, there are several deficiencies which should be addressed:

1. *Scope of Application: Geographical* – The proposed regulation would automatically confer statewide operating authority on successful applicants unless the applicant voluntarily sought to limit the geographical scope. A comment appears in the narrative, but not in the proposed regulation itself, to the effect that geographical limitations in the operating rights of existing certificate holders would be removed, but without specification of how this will be accomplished. The Commission either should automatically remove the geographical limitations contained in the operating rights of existing certificate holders, or should provide a simple form of notice for existing carriers to file with the Secretary which would automatically remove all existing geographical limitations.
2. *Scope of Application: Types of Service* – The proposed regulation removes the ability of parties to enter into Restrictive Amendments. Unlike the discussion about lack of geographical restrictions, there is no discussion of the intent with respect to limitations within a particular classification of passenger service, even those to which a new applicant voluntarily would submit (for instance, vehicle equipment, vehicle staffing, facilities to be served). If an applicant will be permitted to voluntarily limit the type of service it provides, can such a restriction be submitted to the Commission by the applicant after the initial application is filed? If an applicant will not be permitted to voluntarily limit the type of service it provides, will it be obligated as a regulated common carrier to provide service authorized by a broadly-worded certificate, but for which it is not equipped to offer the riding public? If limitations on types of service will not be permitted but certificate holders will not be held accountable when denying service to those it chooses not to serve, has the Commission abrogated its statutory duty without legislative authorization?



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3. *Standards for Protests* – For decades, existing certificate holders have had the right to protest applications for operational authority similar to their own. The proposed regulations purport to allow other carriers to continue protesting applications, although limiting the scope of the protest to challenges to financial and technical fitness. A certificate holder represents that it will serve riders throughout its service territory; refusal to regularly serve portions of its riding territory could result in a complaint, fines or a determination that the carrier had abandoned portions of its service territory. Clearly one of the important criteria which can be applied under the current system of regulation is a determination of whether the applicant has the financial ability, equipment and operational resources to serve the geographical area for which it seeks authority. The proposed regulation permits protests, but not on the basis of geographical scope. Yet they require that the protestant identify the protestant’s “interest” in the application. If Restrictive Amendments are not permitted, if negotiated limitations on geographical or operational scope are not permitted, and if all carriers have, or will be applying for, statewide authority, what interest need a protestant specify beyond a generic challenge to the sufficiency of the applicant’s fitness? Further, given the cursory information required from the applicant at the time of filing an application, and the paucity of information available prior to discovery, what purpose is served by asking a protestant to identify its “interest,” beyond the fact of its competitive position?
4. *Processing of Protests* – Consider the possibility that a small business, which owns one or two vehicles, applies for authority seeking statewide authority. Assume that during discovery it becomes clear that the applicant intends to serve only one or two counties, or to limit the type of service it provides. If Restrictive Amendments are not permitted, what procedure can be utilized to limit the intended scope of operations? Must an applicant (and protestants) go to hearing before an Administrative Law Judge; and assuming they do, is the ALJ empowered to limit the scope of the application to conform to the applicant’s intended geographical scope (and intended type of service)?

5. THE PROPOSED REGULATIONS ARE ULTRA VIRES

The Commission proposes sweeping changes that eviscerate its statutory responsibilities to administer the Public Utility Code. In an attempt to reduce barriers to entry for passenger motor carriers, the Proposed Rules would effectively eliminate any meaningful substantive review of applications for operating authority either informally by Commission staff or formally in an on-the-record contested proceeding. However well-intentioned it might have been, the proposed regulations leave gaping procedural holes which will result in the effective de-regulation of passenger service in the Commonwealth, without any change to the statutory framework justifying such a result.



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Preliminarily, the Proposed Rules are inconsistent with the Commission's enabling statute because they eliminate the application process for temporary and emergency temporary authority, which is specifically mandated under 66 Pa. C.S.A. §§ 1103, 2509. Under 66 Pa. C.S.A. § 1103, the General Assembly contemplated that the Commission would "consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter". The Proposed Rules have removed the application process for such authority and thus, the removal of 52 Pa. Code § 3.83 is essentially invalid. *See Pa. State Education Assoc. v Cmwlth. of Pa. Dept. of Public Welfare*, 449 A.2d 89 (Pa. Cmwlth. 1982) ("To the extent the regulation is inconsistent with the statute, it must be ignored"); *Crowley v. Freedom Twp.*, 4 Pa. D. & C.4th 418, 421 (Com. Pl. 1989) (holding the same).

Likewise, the General Assembly has chosen to deregulate certain aspects of the transportation industry, but specifically has not done so with respect to common carriers. For example, the General Assembly passed Act 22 of 2015 deregulating certain ridesharing agreements. In 2004, the General Assembly passed Act 2004-94 giving the Philadelphia Parking Authority the responsibility to regulate taxicab and limousine service in Philadelphia and removing the Commission's authority over such carriers in Philadelphia. 53 Pa.C.S. §§ 5701-5745. In the case of Act 2004-94, the General Assembly recognized the need to limit the number of operators geographically and accordingly, limited the number of medallions that the Parking Authority could issue in Philadelphia. Similarly, the General Assembly has limited the number of common carriers geographically with the "need" requirement and has not expressly eliminated the consideration of "need" from the statute.

In eliminating the "need" requirement and failing to provide a real standard for protests under the Proposed Rules by not articulating how an applicant's lack of fitness could be challenged by a certificate holder, the Commission has seemingly eliminated the protest process. In essence, the Commission has deregulated common carrier transportation and, without legislative authority, has removed any opportunity for current carriers to raise concerns related to fitness and need. Although the Commission's powers are broad under its enabling statute, it must not act outside the confines of the Public Utility Code.



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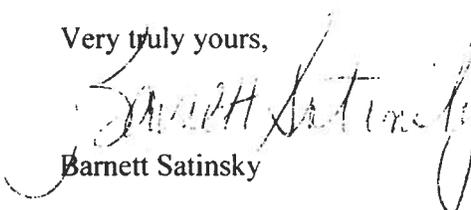
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6. CONCLUSION

Rather than work towards a comprehensive approach to transportation consistent with its existing statutory duties and the direction taken by sister agencies, the Commission essentially is taking it upon itself to largely de-regulate passenger transportation throughout the Commonwealth. It has drafted a proposal which far exceeds the simple removal of the "need" element as part of what an applicant must demonstrate. A more studied approach than the proposed regulation is warranted.

Very truly yours,



Barnett Satinsky

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cc: Bureau of Technical Utility Services (via FedEx)