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March 25, 2016

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**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**

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

Dear Secretary Chiavetta:

We represent Billtown Cab Co., Inc. (Billtown) and MTR Transportation, Inc. (MTR), t/d/b/a K-Cab Co., which hold operating authority issued by the Pennsylvania Public Utility Commission (Commission). Billtown provides call or demand and paratransit service in Lycoming County and airport transportation service from points in the Counties of Lycoming and Clinton. MTR provides call or demand and paratransit service in the County of Columbia and portions of the Counties of Montour, Northumberland and Luzerne.

On behalf of Billtown and MTR, we offer these comments in opposition to the Proposed Rulemaking docketed by the Commission at L-2015-2507592, which was published in the Pennsylvania Bulletin. 46 Pa. Bulletin 1016-1026 (February 27, 2016). The Commission should withdraw or modify the Proposed Rulemaking for the following reasons: (1) the existing entry standards are not burdensome; (2) the proposed regulations are detrimental to service in rural territories like MTR and Billtown serve; and (3) the proposed regulations exceed the Commission's statutory mandate.

1. Existing entry standards are not burdensome.

The Commission's premise is that proof of "public demand or need" entails "a complex, costly and time consuming administrative process". 46 Pa. Bulletin at 1016. No statistical analysis or other evidence was provided to support this conclusion.

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Protested motor carrier applications frequently are resolved by restrictive amendment before hearing. In the last 24 months, the Commission reduced time to grant certificates in uncontested applications by delegating that responsibility to staff. There is no limit on the number of certificates which the Commission may grant.

Existing entry standards require that an applicant demonstrate that approval of its application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code §41.14(a). The applicant is not required to prove need in every municipality. Proof of need within the proposed area generally is sufficient. Purolator Courier Corp. v. Pennsylvania Public Utility Commission, 51 Commonwealth Ct. 377, 414 A.2d 450 (1980). The applicant also is not required to show that granting its proposed authority will not endanger or impair operations of existing carriers or that their services are inadequate. 52 Pa. Code 41.14(c).

Request testimony is competent to show need. 52 Pa. Code §3.382(a). It replaces or supplements testimony from public witnesses to show need, thereby expediting hearing. The Commission for years has granted contested applications for passenger authority supported solely by request testimony. Application of Trafford Motor Coach Service, A.66133, F.2 (1947), affirmed sub nom. H.J. Gongaware & Sons v. Pennsylvania Public Utility Commission, 163 Pa. Superior Ct. 9, 60 A.2d 364 (1948) and cases cited therein; Application of Schuylkill Valley Lines, Inc., 46 Pa. P.U.C. 740, 743 (1973).

Parties in protested applications stipulate the admissibility of facts and exhibits. They take testimony only on disputed facts. These practices, which the Administrative Law Judges strongly encourage, also streamline hearings.

2. The proposed regulations are detrimental to ridership in rural territories.

Ridership in rural counties differs from ridership in urban counties. The population is sparse and less dense in rural counties. Mass transit is not available in rural counties. The passengers are persons without private transportation – senior citizens, the disabled, persons who cannot afford vehicles, for example. They often are not employed. Their transportation needs are irregular, unlike the steady commercial demand in urban areas.

The United States Census 2010 data are revealing. www.census.gov. The Counties of Columbia, Lycoming and Montour, which Billtown and MTR serve, differ materially in population from urban counties, as the following chart illustrates:

<u>County</u>	<u>Population</u>	<u>Land Area Sq Mi</u>	<u>Population Density/Sq. Mi</u>
Columbia	67,295	483.11	139.3
Lycoming	116,111	1,228.59	94.5
Montour	18,267	130.24	140.3
Allegheny	1,223,348	730.07	1,675.7
Lackawanna	214,437	459.08	467.1
Lancaster	519,445	943.81	550.4
Lehigh	347,497	345.17	1,012.5
Northampton	297,735	369.67	805.4
Philadelphia	1,526,006	134.10	11,379.6

The ridership “pie” in counties like Columbia, Lycoming and Montour is materially smaller than in urban counties. The distance between origin and destination per trip is greater in the rural counties. During 2015, Billtown averaged 10.5 miles per trip and MTR averaged 9.0 miles per trip. Adding carriers and vehicles in these small markets siphons off ridership which supports existing services provided by carriers like MTR and Billtown.

Limousine service and even group and party service are luxury options for passengers who can afford them. Call or demand and paratransit services in rural areas attract as passengers senior citizens, the disabled and persons who cannot afford vehicles or do not drive. They use the services for trips to and from their doctors’ offices, dialysis or other medical appointments, grocery stores, pharmacies, shopping malls and recreational activities. The services of carriers like MTR and Billtown are a necessity for these passengers who cannot make the trips without them.

3. The proposed regulations exceed the Commission’s statutory mandate.

By enacting that Public Utility Code (Code), the General Assembly vested in the Commission jurisdiction to regulate public utilities. The term “public utility” includes an entity owning or operating equipment in Pennsylvania to transport passengers as a common carrier. 66 Pa. C.S.A. §102. By this rulemaking, the Commission proposes effectively to deregulate passenger service in Pennsylvania without any change in the statute.

The Code mandates an application process for temporary authority (TA) and emergency temporary authority (ETA). 66 Pa. C.S.A. §§1103, 2509. The Commission’s proposal to eliminate its regulations for TA and ETA, 52 Pa. Code §§3.383-3.385, violate this statutory mandate.

The Commission may grant a certificate of public convenience “only if [it] shall find . . . that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S.A. §1103. Absent evidence of need, the

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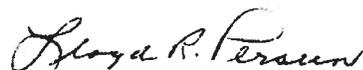
Commission cannot make such a finding in rural markets. The Commission may not infer need in sparsely populated counties from the commercial transportation demands in densely populated urban areas – trips to and from airports, train stations and bus terminals, theaters, professional sports events, high rise office buildings, etc. These transportation stimuli do not exist in the sparsely populated markets.

Deregulation of the common carrier industry is a matter within the purview of the General Assembly. By Act No. 22-2105, the General Assembly deregulated certain ridesharing agreements. By Act No. 94-2004, the General Assembly transferred from the Commission to the Philadelphia Parking Authority (PPA) jurisdiction over taxi cab and limousine service in Philadelphia. 53 Pa. C.S.A. §§5701-5745. Likewise, amendment of the Code is necessary to eliminate the Commission's jurisdiction over the transportation of passengers by common carrier.

Conclusion

The proposed rulemaking should be withdrawn. The Commission: (i) should explore with the General Assembly amendment of the Code to transfer to authorities like the PPA jurisdiction over call or demand, paratransit and limousine service in urban markets, but (ii) should retain jurisdiction over call or demand and paratransit services in sparsely populated markets like the Counties of Columbia, Lycoming and Montour under existing Commission regulatory requirements, 52 Pa. Code Chapters 1, 3, 5, 23, 29 and 41.

Very truly yours,



Lloyd R. Persun

LRP:pg

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