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Telefacsimile and Federal Express
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Re: Proposed Regulatory Changes

Dear Mr. Milstein:

I am writing on behalf of Lady Liberty Transportation Company and Best Limousine, Inc. In these comments, I am responding for them to the Philadelphia Parking Authority's (PPA) proposed changes to the regulations governing the airport shuttle industry.

First, we ask whether it is appropriate for us to assume that anything that is in the extant regulations and not mentioned or changed in this proposed amendment is, in fact, not being changed. If you would be kind enough to respond on this point, it would help us to know whether we need to expand our comments, and how.

With respect to the substantive proposed changes, we are exceedingly disappointed that the two main areas of contention—driver training and testing, and the vehicle mileage retirement policy—are being continued, without change or meaningful change.

With respect to the mileage limit, the airport shuttle industry uses vans. Vans are built like trucks. They have a heavy duty chassis, and a heavy duty engine. Vans are not like taxis, which are passenger cars. Vans are capable of running well, and being fit and appropriate for public transportation, well beyond the 350,000 mile limit. The draft regulation proposes to change the mandatory retirement age from 7 years to 8 years, but the regulations will maintain the same mileage limit, i.e., 350,000 miles. We understand that after the 350,000 mileage mark is reached, the Parking Authority will inspect the van, and may grant an extension for service for 1 more year if it is deemed satisfactory, for a fee. (What is the fee proposed?)

The most important objection we have to the mileage restriction is that it constitutes an expensive burden, and an unnecessary one, on the airport shuttle industry, which is engaged in interstate commerce because it uses vans, which are essentially trucks. We understand why there is a vehicle mileage limit set at 250,000 for taxis, but to impose a 350,000 mileage limit on vans has no basis in fact or data, that we know of, and is therefore arbitrary. We urge you to read our Expert Report (attached) at pp.

Most vans in airport service log between 50,000 and 80,000 miles per year in any given year. At the upper end of that range, the extension from 7 to 8 years is completely meaningless, because the van will have to be retired when it reaches 350,000, typically long before it reaches 8 years, or even 7 years.

Only at the lowest end of the mileage range, could the extension from 7 to 8 years have any meaning or effect. That scenario assumes that a van in airport service logs *only* 50,000 miles for *every* year it is in service; only in this scenario could that van *possibly* get to the point of having 350,000 miles *and* being 7 years old, after which, the PPA *may* grant an extension of time, based on an inspection.

If the extension from 7 to 8 years was supposed to allay our concerns about the burdensome ness of the mileage limitation, it has not; it has exacerbated our frustration because we feel that the PPA does not “get” what we are experiencing economically because of the forced retirement policy. Since we credit the PPA with positive intention in proposing to raise the year limit from 7 to 8 years, we ask it to give this subject closer attention and introspection, because the desired end will not be— cannot be— achieved by *only* raising the year limit, *without* an increase in the mileage limit.

We know from experience and more importantly, the the data collected for our Expert Report, that most vans in airport service log closer to 80,000 miles per year rather than 50,000 miles per year. Therefore, reduction of burden on our industry the PPA hoped to achieve by the extension from 7 to 8 years could actually only be brought about by an increase in the mileage.

Moreover, there is no justification for the particular mileage limit chosen— no vehicle manufacturers’ report, no repair record analysis, no commonality amongst regulators elsewhere, no data collected from shuttle service on the ground and in actual operation. Because the mileage limit for vans already differs from that of taxis (limousines, or cars), the PPA explicitly has recognized the difference between the types of vehicles, and need not fear “setting a precedent” for increasing the limit on taxis, or harming its purpose to closely regulate the much larger and disparate taxi fleet.

Our research shows that 18% of vehicles in Lady Liberty’s fleet reached the 350,000 mile limit before being forced to retire, under the extant rule. That is nearly one-fifth of a firm’s fleet, being mandatorily retired, without cause or evidence of lack of fitness for service.

Losing one-fifth of one’s fleet to an unnecessary and inflexible policy is burdensome.

The cost of purchase of a new or nearly new van is burdensome to Lady Liberty and Best Limousine, as set forth in our Expert Report, at pp. 20-26 and 31-35. For Lady Liberty Transportation Company, this regulation has imposed a burden of \$47,500 as a total cost for the five vehicles it has already had to retire from its fleet due solely to this mileage limit. For Best Limousine, the regulation is expected to cost \$28,327 over a five year period.

In turn, this mandatory retirement policy burdens consumers and restricts their travel choices. Our firms cannot invest in as many vans as we would be able to without the mileage limit, nor use them as efficiently as possible. The travel choices for consumers are narrowed due to excessive regulatory cost and burden.

We suggest that vans be permitted to reach 500,000 miles, or 8 years, subject to inspection and retirement beginning at the 350,000 mile mark. This is a fairer and more equitable way to ensure that vans that continue to be well maintained and fit for carrying passengers in public transportation, will remain in service but at the same time serve the PPA's purpose to ensure that only vans fit for public service remain in the fleet. Adoption of this suggestion will ensure efficiency as well as good customer service, without burdening the industry as a whole with an inflexible rule.

Under the current practice, Lady Liberty and Best Limousine may extend the life of a particular van in a fleet if they have it inspected by the PPA and it passes under the waiver system. However, the waiver system is vague, and we do not pretend to understand it. It does not constitute a protocol that businesses can count on, plan for, or use to make investment-backed decisions. The PPA has apparently not gathered any data under the waiver system, because it did not find its extension from 7 to 8 years on data from the waiver system, that we are aware of. Therefore, we also request from the PPA the universe of data it has on the number of vans that have reached the mandatory retirement mileage of 350,000 miles and been "waived" or continued in service, and how many miles were logged and how old each van was before it was retired.

Moreover, the extension beyond 350,000 and up to 8 years in the proposed regulations only exists, to our understanding, for the remainder of the calendar year in which the vehicle reaches 350,000, not for a whole year (365 days). It is not clear how frequently the Parking Authority will re-inspect during that year or partial year. Inspections are also costly (a minimum of \$3,340 for Best Limousine, and \$2,100 for Lady Liberty over three years) in terms of down time for the vehicle and driver and the inspection fee, as set forth in our Expert Report, dated Feb. 21, 2008, pp. 19 and 30.

Therefore, we strenuously urge that the PPA add to the increase from 7 to 8 years, an additional change, to wit, an increase in the mileage limit before retirement. We suggest 500,000 as a reasonable figure.

Before moving on to our next major objection, we parenthetically note that the PPA's regulations do allow diesel-fueled vans to get to 500,000 miles before being retired. Again, there

is no factual basis for the tiered system of 250,000 miles for taxis, and 350,000 miles for gasoline-powered vans, while diesel-powered vans may stay in service longer. Vans are vans. They have the same chassis and body framework.

The type of fuel does not have anything to do with the longevity of a light duty truck/van of the Ford E-series type used in the airport shuttle industry. It is common knowledge that diesel engines burn fuel more efficiently by using high pressure and heat instead of a spark. The engines have to be more rugged to withstand the strain. That is the "reason" an engine (not the van itself or any other parts) tend to last longer—they are built to last longer. They are also more expensive to build and install. In fact, only 10% or less of Ford's E-Series full size vans used in the airport shuttle industry even come with diesel engines, and that is expected to further dwindle with strict new emissions rules put in place in 2007 to meet federal Clean Air Act goals. Diesel engines are notoriously polluting, and the NOx emissions (to say nothing of small particle emission (PM 10 and PM 2.5) emissions) may go well beyond what the State Implementation Plan for Pennsylvania and the Delaware Valley Regional Planning Commission MPO-area will permit in the City, which is a non-attainment area, officially.

Our second major objection to the extant regulations, as well as the draft proposed regulations, is that they impose driver training and testing requirements on our firms and drivers, requirements that have nothing to do with our airport shuttle industry, and which are costly in terms of fees and time spent by each driver.

We train our own drivers to a much higher standard, than taxis, because of government and private sector contracts we have. The driver training and testing offered by the PPA is thus unnecessary and duplicative, at best. The PPA training is also confusing to our drivers. Because it is geared to taxis, it contains information that is inaccurate in some respects, or just irrelevant.

Lady Liberty Transportation Company and Best Limousine make a continuing request to be exempted from the existing driver training and testing process, since it offers no benefits whatsoever to our drivers, firms or customers.

On a related topic, we point out, again, that the unitary certification of drivers for taxi licenses and van shuttle licenses will harm our industry and endanger passengers' safety, because a driver could be hired by us with the unitary certification, and work more than the federal legal limit of hours (10 hours of driving per day), by driving a taxi on his off-days or off hours. Taxi drivers may lawfully drive 14 hours per day. We are very concerned about this problem. The PPA has not addressed this concern despite our having brought it to your attention numerous times, in numerous venues.

Assuming, as we understand, that the unitary certification was part of the basis for the uniform training and testing module, we categorically state that it is not only unnecessary, duplicate and irrelevant, but it may also harm our passengers' safety and safety on the road generally. If the PPA does not create some way of avoiding this potential harm, we cannot possibly agree to the training and testing of our drivers on the taxi-oriented training module. We

strenuously object to the continuation of this aspect of the regulations.

Third, the PPA's proposed regulations appear to allow inspections at the regulated company's site, as we requested, but only if the company owns and operates more than 50 vehicles and is a licensed state inspection station, plus other details, none of which apply to Lady Liberty or Best Limousine. What is the basis for this change in the regulation? Under the prior regulatory regime, site inspections were always done at the regulated firm's site by the PUC. As noted above, inspections are costly and burdensome when conducted off-site.

Fourth, the PPA does have a section in the proposal on criminal background checks for drivers, but it is struck through. Does this mean that it is being done away with? Will the PPA allow regulated companies to do the background check "in house?" If not, what is the change, if any? Kindly explain. The PUC already requires our firms to do background checks, and we do perform them regardless of the PPA requirements.

Additionally, Lady Liberty and Best are dissatisfied with the background checks being done by the PPA at the present time. We have proposed on several occasions that we would do our own background checks, since same is required by our insurers, and others with a vested interest in our employing safe drivers. Since we do the background checks on employees anyway, the PPA's check is redundant at best, and flawed at worst. Best Limousine has had experience with a driver certified by the PPA who went to Best for employment and then failed the background check administered by Best. How can the PPA explain that result? What did Best pay for?

If the PPA is going to allow our firms to do criminal background checks, as we requested, and as is already required by the PUC (and done), will the PPA adjust the fee downward?

Respecting fees, we continue to object to the \$250.00 fee for registrations and certification, and the other fees the PPA has imposed, detailed in our Expert Report.

Finally, the PPA states in the proposed regulations that the form for the driver's physical exam must come from the PPA itself. The PPA did accept Lady Liberty's and Best Limousine's physical exam forms in the past. Does this mean that the PPA will not accept Best Limousine's and Lady Liberty's physical exam forms in the future? What is the basis for such a change? Obtaining the forms and having the physician fill out the PPA forms is yet another obstacle to efficient certification of drivers; the more down time drivers and vans have due to excessive regulation by the PPA, the fewer customers we serve, and the less remunerative the business becomes.

Best Limousine and Lady Liberty are two of Philadelphia's most valued and reliable transport services to and from the airport. Our vans carry multiple passengers on each trip, and that helps alleviate traffic congestion. Vans with multiple passengers going to and from the airport also help our environment by reducing air pollution, at no cost to the City, the State, the passengers, or the Parking Authority.

The Parking Authority should be doing everything it can to assist our niche airport shuttle industry and keep it strong, for its obvious benefits and for consumer choice for lower cost access to the airport. Instead, we view these regulations as a continuation of the burden imposed in 2005: duplicative, unnecessary and costly regulations and fees.

We look forward to continuing to speak with the Parking Authority representatives to try to achieve an appropriate regulatory atmosphere that will help, not hurt, businesses such as ours serving the airport and Philadelphia's hospitality trade.

Sincerely,



Janine Bauer

- c. Andrew Chirls, Esq., Timothy Stauss, Esq.,
James Ney

ANALYSIS OF BURDEN TO INTERSTATE COMMERCE
IN THE MATTER OF
LADY LIBERTY TRANSPORTATION CO., INC., et al.
VERSUS
PHILADELPHIA PARKING AUTHORITY

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