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March 25, 2011

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

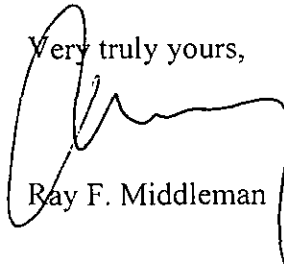
**RE: Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v.  
Yellow Cab Company of Pittsburgh  
C-2011-2211682  
Our File No.: 26003/12316**

Dear Ms. Chiavetta:

Enclosed please find a Brief in Support of Petition for Declaratory Order filed on behalf of Airlines Acquisition Company, Inc.

Thank you for your attention to this matter.

Very truly yours,



Ray F. Middleman

RFM/kjb  
Enclosure

cc: Honorable John H. Corbett, (w/encl.) (via email)  
John A. Pillar, Esquire (w/encl.)  
John Herzog, Esquire (w/encl.)  
William A. Gray, Esquire (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Airlines Acquisition Company, Inc. t/d/b/a  
SuperShuttle Pittsburgh

Docket P-2009-2115720

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**BRIEF OF AIRLINES ACQUISITION COMPANY, INC.  
IN SUPPORT OF PETITION FOR DECLARATORY ORDER**

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UTILITY COMMISSION  
CLERK'S BUREAU

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**HIGHLY CONFIDENTIAL  
UNDER PROTECTIVE ORDER**

Due: March 25, 2011

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Airlines Acquisition Company, Inc. t/d/b/a  
SuperShuttle Pittsburgh

Docket P-2009-2115720

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**I. Statement of the Case**

This matter comes before the Public Utility Commission (hereinafter “PUC” or “Commission”) by way of a Petition for Declaratory Order filed on behalf of Airlines Acquisition Company t/d/b/a SuperShuttle Pittsburgh (hereinafter “SuperShuttle Pittsburgh” or “Airlines Acquisition”). SuperShuttle Pittsburgh is to be, and to some extent already is, part of a nationwide network of franchise operations which provide safe, cost effective, airport transfer service on a non-exclusive basis. Through the use of uniform trade dress (blue vans with yellow markings); a national reservation system; and proprietary computer dispatching, SuperShuttle has developed a national brand and an established process for providing fast and efficient service to the public.

Herein, Petitioner seeks confirmation from the PUC that its proposed method of operations, via a “franchise model”, is compliant with all PUC regulations and requirements for safe and efficient service to the public.

It is the position of SuperShuttle Pittsburgh that it retains appropriate regulatory control over both the vehicles being used in airport transfer service and the franchisee drivers operating the airport transfer service such that both compliance with the regulations of the PUC and the safety of the public are assured.

Forsaking that the business relationship between driver/operator and certificated carrier is called a “franchise”, the Petitioner asserts that the true nature of the relationship is defined by the documents and the conduct of the parties. In this case, the conduct of operations under the specific terms set forth in the Unit Franchise Agreement and under the existing conduct of SuperShuttle airport transfer service does not violate PUC regulations and preserves regulatory control with the certificated carrier.

No regulations exist which are directly on point with the proposed method of operation proposed by SuperShuttle Pittsburgh. There are, however, sections of the regulations (52 Pa.Code §29.101(a)(5)) and one case, McQuaide v. PUC, 629 A.2d 272 (Pa.Comm. 1993), which are reflective of the Commission’s distaste for a certificated carrier “leasing” its rights to non-certificated operators. The instant facts do not support a conclusion that the certificated carrier’s rights are being controlled or used by a non-certificated entity to an extent which deprives the certificated carrier of ultimate control over the franchisee and the service being provided to the public. The McQuaide case is of almost no precedential value when applied to the instant facts and the realities of today’s public demand for airport transfer service.

## **II. Summary of Argument**

The Objectors to the instant Petition have set forth multiple concerns, several of which can be grouped together into two distinct, but related issues.

A) The first issue involves the Objectors’ concerns that the ownership, maintenance, insurance and control of the vehicles to be used in the SuperShuttle Pittsburgh operations falls outside the certificated carrier’s control.

Petitioner believes that the testimony and evidence adduced during the hearings demonstrates conclusively that the vehicles being used by the franchisees will be properly maintained, insured, owned and controlled by the certificated carrier.

B) Secondly, the Objector's set forth concerns that the franchisee/drivers will not be properly controlled, trained and monitored from a regulatory perspective such that their operations will constitute a "leasing" of the certificated carriers rights.

Petitioner believes that the testimony adduced at trial and the terms of operation detailed in the Unit Franchise Agreement provide the certificated carrier with more than adequate regulatory control of the franchisees operations under those regulated operating rights. At no point do the franchisee operators abrogate the certificated carriers control over its own operating rights.

### **III. Background**

SuperShuttle airport transfer service has been in operation, starting in Los Angeles, California, since 1983. (TT. pp. 114-115). Currently, SuperShuttle operates at 37 airports located in 19 operative cities, nationwide (TT. p. 108). In every venue presently serviced by SuperShuttle, there is some form of regulatory authority which governs the operations of SuperShuttle's airport transfer service, be it a public utilities commission; a state/commonwealth department of transportation; or an airport regulatory body. Further, because SuperShuttle operates under a "franchise model", there are also controls at either the state level or federally via the Federal Trades Commission ("FTC"). All franchisors must comply with the FTC and in 13 states (excluding Pennsylvania) there are also state governmental agencies which regulate franchisors. (TT. pp. 109-110). The process of becoming approved by the FTC – and staying in

compliance with the FTC – is an expensive and time consuming process involving annual renewal, review of past operating history, financial data and the like. (TT. p. 110).

In 1994 SuperShuttle instituted a national reservation system, referred to as REZ Central. This system utilizes a toll free telephone number, the internet and the worldwide web for booking reservations. SuperShuttle maintains its REZ Central facilities in Tempe, Arizona and Tampa Bay, Florida. All requests for service, nationwide, are received by REZ Central and then, by use of a proprietary computer program/system, those reservations are assigned to the appropriate City Licensee or area SuperShuttle franchise operator. (In this case, SuperShuttle Pittsburgh/Airlines Acquisition). The automated dispatch system groups trips to and from the airport in such a manner that the most efficient, cost effective groupings are put together for drivers to handle. As stated by Ms. Judy Robertson, Vice President, Regulatory Affairs, SuperShuttle International, Inc.:

Q So, every day the SuperShuttle driver receives an itinerary?

A No. Our system is such that we take reservations on a national basis. Those reservations are then put into a hopper and then sent out to the particular city that that reservation is relative to, so any - - we have two reservation centers.

Our main national reservation center is located in Tempe, Arizona and a second auxiliary operation is in Tampa Bay, so phone reservations and Internet reservations, we also take reservations via the WEB, go into a central repository, a computerized system, and then those reservations go out to each of the cities.

Pittsburgh will get, from the reservation system, X-number of reservations for the upcoming day or days. The automated dispatch system groups those customer reservations together based on what are called sectors or zip code locations and the automated dispatch system is what the drivers are connected with via Nextel phones or a proprietary mobile data unit that's installed on the vehicles.

The drivers, when they log onto the system, they are logging on saying that they are making their vehicle available for service. They

will receive a group, either a single reservation that is scheduled for pickup or a group of reservations, that are in the sector, in a defined area.

They have the opportunity to either accept or decline that business based on where they happen to be, you know, if they want to drive that extra 20 minutes to go pick up those customers, or perhaps they're at the end of their day and they know that they don't have the time left on their available driving time to complete the trip.

They would accept those trips or decline those trips. It would go to the next vehicle in line, so they don't receive an itinerary. They're not assigned a trip, but all trips are dispatched out, they're accepted by a van operator and then the trips are processed and handled.

Q The national reservation system has been developed over quite a long period of time, hasn't it?

A Yes, we began the national reservation system in 1994.

(TT. p. 119, line 21 through p. 121, line 11).

For purposes of clarity, the record correctly reflects that the master franchisor is SuperShuttle Franchise Corporation, a Delaware Corporation. It holds the trade name and the franchise rights to the transportation system. It is headquartered in Scottsdale, Arizona.

SuperShuttle International, Inc., a part of Veolia Transportation on Demand, is the parent company of several wholly-owned subsidiaries and owns SuperShuttle Franchise Corporation.

SuperShuttle Franchise Corporation granted to Airlines Acquisition t/d/b/a SuperShuttle Pittsburgh the right to be the City Licensee or area franchisor for SuperShuttle. Airlines Acquisition t/d/b/a SuperShuttle Pittsburgh is the PUC certified carrier with airport transfer rights in over 13 counties in Western Pennsylvania. (TT. pp. 141-144).

SuperShuttle Pittsburgh began business under the franchise model on May 1, 2009 in Allegheny County. This occurred without PUC involvement because Allegheny County is regulated by the Port Authority of Allegheny County and not the PUC. (See 52 Pa.Code

§41.13). Initially started with 10 franchisees, the SuperShuttle Pittsburgh franchisees were converted to independent contractors after Ms. Robertson and other SuperShuttle representatives met with PUC officials in late 2009 to discuss the viability of the franchise model in areas outside Allegheny County. The outlying counties are all within the control of the PUC. Airlines Acquisition t/d/b/a SuperShuttle Pittsburgh holds significant airport transfer authority in Western Pennsylvania. (See Petitioner Exhibit "A"). Under FTC regulations, a franchisor cannot simultaneously offer both franchise and non-franchise business operations. For this reason, SuperShuttle Pittsburgh ceased offering franchises to potential operators until such time as the within issues are resolved with respect to PUC regulated operations in the counties outside of Allegheny County.

There are presently 22 vans in operation under an independent contractor model servicing the SuperShuttle Pittsburgh certificated area. (TT. p. 209). Tens of thousands of trips have already been made by SuperShuttle Pittsburgh without any significant service issues or problems. The present operations of SuperShuttle Pittsburgh mirror, exactly, how operations would occur under a franchise arrangement, but for the actual implementation of the franchise agreements.

It should be antedotely noted that on the initial May 1, 2009 start date for SuperShuttle Pittsburgh, between 50 and 60 internet reservations were made within the first few hours of opening the SuperShuttle Pittsburgh site on the reservation platform. This is due to the strong nationwide brand recognition of SuperShuttle. (TT. p. 121, line 17 through p. 122, line 6).

It is also a significant advantage that SuperShuttle International operations has hundreds of millions of dollars of financial support for ongoing operations. Financial support for the SuperShuttle Pittsburgh operations is not in question. (TT. p. 125, lines 13-20).

SuperShuttle has developed its franchise documents/agreements (Petitioner Exhibit B) over the course of multiple decades, having come to the conclusion that the use of the “franchise model” is the most cost effective and efficient manner in which to operate its airport transfer service. While the basic format of operations has remained the same in all venues, the documents themselves are able to be modified to allow the franchisor to require all franchisees to comply with local, state and/or federal regulatory requirements. (TT. pp. 11-112). In every case where there are more stringent requirements from one regulatory agency to another, the more stringent requirements are set forth in the documents represented by Petitioner’s Exhibit B. (TT. p. 112).

In the SuperShuttle Pittsburgh territory, there are regulatory requirements set forth by both the PUC and the Allegheny County Airport Authority. In fact, in several key respects, the Airport Authority Ground Transportation Regulations (see Petitioner Exhibit C) requires greater insurance limits than those of the PUC and requires that each vehicle be owned or leased by the certificated carrier, with registration held in the name of the carrier.

In the instant Petition, SuperShuttle Pittsburgh seeks a very narrow interpretation with respect to the operation of its “franchise model”. It is not the intention and/or request of this carrier to open the door to franchise operations, generally, throughout the PUC regulated transportation industry. SuperShuttle Pittsburgh seeks to put before the PUC, for approval, a system which it has fortunately had the benefit of perfecting, through operative trial and error, over the past 28 years. The operation of the “franchise model” detailed in Petitioner’s Exhibit B and further discussed in the hearing testimony, reflects a proven product – a national reservation system (toll free, worldwide web and internet); uniform vehicles (8-10 passenger vans); uniform trade dress (blue vans with yellow detailing); non-exclusive transportation; advanced

reservation/ticketing; drivers who are vested in the business as independent businessmen; detailed operational requirements; and regulatory/governmental control. (TT. p. 116; Petitioner's Exhibit B). The focus of this Petition is unique in that the "product" being presented for PUC approval has already been proven to be a safe and cost efficient means of transportation throughout the country. The franchise system used by SuperShuttle is more an alternative means of compensation for the drivers than it is a radical departure from existing regulatory control.

#### **IV. Argument**

##### **A) Vehicle Control**

Against this background, the Objectors have generally raised issues which relate to SuperShuttle Pittsburgh's control over the vehicles to be put into service and, specifically, with respect to the potential abrogation of 52 Pa.Code §29.101(a)(5) which relates to control of "leased equipment".

It is the position of SuperShuttle Pittsburgh that the degree of control retained and to be exercised by the "franchisor" exceeds that which the PUC requires and that the "leased equipment" (which is actually being "purchased" rather than "leased") is not outside the regulatory control of the carrier.

The record demonstrates that both the PUC and the Airport Authority require that the vehicles being used for the service at issue be owned or leased by the certificated carrier. The Airport Authority requires that the vehicles be "registered" to the certificated carrier.

As set forth in the testimony of Ms. Robertson, it is not disputed that the vans to be used in the SuperShuttle Pittsburgh franchise operations will be owned by SuperShuttle (Airlines Acquisition) for the entire period during which they are in service:

Q One issue which Mr. DeLucia seemed to be concerned about was the ownership of the vehicles, and could you tell the court how

SuperShuttle plans to operate, pending PUC approval, regarding ownership of the vehicles?

A The franchisees have a couple options when it comes to their vehicles. They can bring the vehicle into the fleet. In order for it to be able to operate within the Airlines Acquisition SuperShuttle Pittsburgh fleet, that vehicle must be registered under Airlines Acquisition's name with the Airport Authority.

If they lease a vehicle from the company, it's a lease-to-own. It's a long-term extended lease where there is an opportunity at the end of the lease, to do a buy-out. Franchisees may or may not elect to do the buy-out. They may elect to lease a new vehicle at that point.

The vehicles are registered in the name of Airlines Acquisition and insured under a master policy.

Q So that we're clear for the court, every driver will be operating a vehicle that is owned and registered by SuperShuttle?

A Airlines Acquisition.

Q Airline Acquisition, I'm sorry. That's actually the requirement that the Airport Authority kind of trumps whatever the franchisor or franchisee agreement was going to be?

A Yes.

Q So, in Pittsburgh, because the Airport Authority requires it, the vehicles will have to be owned and registered to Airlines Acquisition, the certificated carrier?

A Yes, that's my understanding. The PUC requires that as well.

Q Right, that only in call-and-demand taxi operations can the vehicle be leased; is that your general understanding?

A Yes.

Q So, in Pittsburgh, whatever steps need to be taken to make sure that the vehicle is owned and registered with Airlines Acquisition, those can be handled from changing these documents, if necessary, or doing whatever it takes to make it compliant with the PUC regulations?

A Yes.

(See TT. p. 126, line 9 through p. 127, line 25).

Further, the way in which the lease/purchase option works is that the driver, after “paying off” the vehicle has a right to continue to use the vehicle (assuming it meets equipment standards) without having to make a monthly or weekly payment for that vehicle. Naturally, this increases the driver’s revenue to the extent that he does not have to make that payment. The title of the vehicle which he “owns” will be transferred to him, personally, when that vehicle is taken out of service and the trade dress is removed. While in service, the vehicle remains titled, insured, and registered to SuperShuttle/Airlines Acquisition.

Q So, let’s take a scenario where a driver is operating under a lease/purchase arrangement. He makes his lease payments for a certain period of time and then has the option to purchase the vehicle or to lease a new vehicle - - or lease/purchase a new vehicle.

If he decides he wants to pay the fee at the end and buy the vehicle, there’s an advantage to him of not then having a monthly payment to make for the vehicle. He would have the right to own the vehicle?

A Yes.

Q But, the vehicle - - he can’t own the vehicle under the Airport Authority regulations or the PUC?

A That’s right.

Q So, would there be some kind of executory component to this that if he left the service or retired the vehicle from the service, the title of that vehicle would go to him?

A If he opted to do the buy-out and then . . .

Q And take it out of service?

A And take it out of service.

Q But, until that vehicle goes out of service, he does not actually get to take the vehicle?

A He doesn't get title to the vehicle, and as long as that vehicle remains an operating SuperShuttle vehicle, then it is covered under the master insurance policy. If he were to elect to do the opt-out and remove it from SuperShuttle's operating fleet and use it as a personal vehicle, then the insurance ceases, just it becomes his private vehicle and he's obligated to cover his own insurance, but it can't be used in the operation of the SuperShuttle's franchise business.

Q Is this a method of operation which SuperShuttle has used in other venues throughout the country when necessary?

A Yes.

(See TT. p. 128, line 7 through p. 129, line 16).

All vehicles operating under the SuperShuttle program are insured under a master insurance policy which provides coverage to Airlines Acquisition in amounts in excess of the Commission requirements and in full compliance with the Airport Authority requirements of \$1,000,000. (See TT. p. 128, lines 1-6; Petitioner's Exhibit C, pp. 12-13).

Under the Unit Franchise Agreement (Petitioner's Exhibit B at Tab D, p. 19 "Inspection Rights") the franchisor (SuperShuttle/Airlines Acquisition) retains the right to inspect the vehicle and all records and documents issued by the franchisee, without prior notice. This is in addition to compliance with all PUC inspection requirements.

Further, under the terms of the Unit Franchise Agreement, the vehicle is to be inspected every 60 days by the mechanics at SuperShuttle/Airlines Acquisition. The driver is permitted to have vehicle maintenance done at a garage of his own choosing, but proof of all maintenance work must be provided to SuperShuttle/Airlines Acquisition and that work is to be inspected by SuperShuttle/Airlines Acquisition. (TT p. 226, line 18 through p. 227, line 2; Petitioner's Exhibit B, Tab D, pp. 5-6, "Maintenance, Inspection and Appearance of Vehicle").

There is a specific form which details the 60 day inspection process to be followed under the Unit Franchise Agreement (Commercial Vehicle Lease Agreement at pp. 10-11). This form

deals with vehicle inspection, appearance and safety features to be inspected by SuperShuttle Pittsburgh every 60 days – exceeding the requirements of the PUC. (Petitioner’s Exhibit B, Tab L, Schedule D, pp. 10-11). The vehicles are also inspected by SuperShuttle Pittsburgh once per week at the time the franchisee “cashes out”. (TT. p. 234, lines 14 through 25).

The vehicles themselves are limited to no more than 5 years of age (more restrictive than the PUC) and must be one of 6 specifically delineated manufacturers/models. Those vehicles are required to be modified to accommodate data transmission equipment with very specific signs, emblems and coloring to be used as trade dress for the vehicle. (See Petitioner’s Exhibit B, pp. 18-19).

Beyond the Unit Franchise Agreement itself, the franchisee’s failure to comply with PennDOT, PUC and/or Airport Authority regulations related to vehicle ownership, maintenance or inspection could result in immediate termination of the franchise agreement by SuperShuttle Pittsburgh. Clearly, the Unit Franchise Agreement requires that all regulatory requirements be met. (See Petitioner’s, Exhibit B, pp. 3, 19, 29; TT. p. 124, line 12 through p. 125, line 5).

Ultimate compliance with all PUC and Airport Authority regulations lies with the certificated carrier. All penalties and fines for failure to maintain regulatory control are to be paid to the regulatory agency by SuperShuttle/Airlines Acquisition. While those fines may be passed on to the franchisee, they remain the responsibility of the certificated carrier. (TT. p. 114, lines 6-21; p. 144, lines 19-25; and p. 199, lines 3-19).

In all respects, the provisions of the Unit Franchise Agreement require that vehicles be PennDOT compliant via yearly inspection; PUC compliant via regular maintenance and inspection; and Airport Authority compliant via Section 3.6.9 of its Ground Transportation Regulations (Petitioner Exhibit C, pp. 9-10).

Further, with respect to the location of the vehicles and their “housing”, it is uncontested that the vehicles may be taken home by each driver. The domicile of the vans is not relevant or related to where the franchisee will undertake service. (TT. pp. 108; 170). What is relevant and important is that SuperShuttle Pittsburgh knows where each vehicle is, via GPS, the instant that the operator logs onto the system. As stated by Mr. James Campolongo, President of Airlines Acquisition:

Q And, Airlines Acquisition is not going to have an employee or agent or somebody going out to these various places and making sure they’re doing the right thing; they’re going to have to report to you on a weekly basis of what their activity has been?

A Well, I mean we know their activity on a minute-to-minute basis. We have a GPS in every vehicle, safety supervisors on the road.

(TT p. 241, lines 7-14). The vehicles are available for PUC enforcement inspection at the request of the PUC. As stated by Mr. Campolongo:

A But, they’re required to come in.

A They’re required to come in?

A Yes.

Q Is there a reason?

A Pardon me?

Q Is there a reason?

A Because we require it.

Q That’s a good reason. Now, if the PUC safety inspector wants to come out and check the vehicles, where would the safety inspector go to inspect the vehicles?

A To Liverpool.

Q Well, but they’re all - - 30 of them are out in 30 different business locations?

A The same as the Taxi business. There are 350 of them out in all different places and we manage to do it with those. We can get them all in.

Q So, you would require the unit franchisee to bring their vehicle in?

A Yes.

(TT p. 242, lines 2-20). Clearly, the technological equipment allows direct and instantaneous communication between the franchisee and Airlines Acquisition at all times during operation.

(TT p. 120, line 9 through p. 121, line 7).

The record in the instant matter, including the documentary evidence and the testimony of Ms. Robertson and Mr. Campolongo, demonstrates that the vehicles being used by SuperShuttle Pittsburgh:

1. Are to be owned and registered to Airlines Acquisition in compliance with PUC and Airport Authority regulations;
2. Are to be insured under a master policy of insurance in an amount at least equal to or greater than \$1 million as required by the Airport Authority and exceeding PUC requirements;
3. Are to be maintained and inspected both daily and on a rigorous 60 day basis for both visual cleanliness and for mechanical fitness;
4. While they may be housed by the franchisee at a place other than the offices of SuperShuttle Pittsburgh, the location of the vehicles is known to the certificated carrier instantly and constantly through GPS tracking;
5. All vehicles are available to PUC enforcement officers upon their request;
6. Airlines Acquisition, as the certificated carrier, maintains responsibility for the condition and safety of the vehicles;
7. Airlines Acquisition, as the certificated carrier, is to be responsible for paying all fines and correcting all deficiencies levied by any regulatory authority;
8. Any franchisee can have his franchise terminated for failure to maintain his vehicle in compliance with the Unit Franchise Agreement which, in turn, requires

the franchisee to comply with all national, state and local regulatory requirements related to the vehicle;

9. All vehicles are equipped with mobile data transmitters/computers which allow for instantaneous communications with Airlines Acquisition dispatchers.

From a technological standpoint, it is difficult to image how the certificated carrier could have greater regulatory control and supervision of the vehicles in use by the franchisees.

Contrary to the factual findings in McQuaide v. PUC, cited above, a case involving a motor carrier of property and household goods, from a regulatory perspective, the vehicles used by the franchisees are clearly controlled, owned, maintained, monitored and insured by the certificated carrier, Airlines Acquisition.

**B) Control of the Drivers**

As stated by Ms. Robertson in her testimony on cross-examination:

Q Ms. Robertson, you indicated that you were going to have a franchise agreement which was going to exercise control over the franchisees if this petition is granted; do you recall that?

A I believe what I said is that a franchise agreement would allow better control and have more controls in place than an independent contractor agreement could have.

Q Why is that; you understand that under the PUC leasing regulations, you're required, as a motor carrier, to exercise control over your independent contractors; you understand that, don't you?

A I understand that, and the control that I'm talking about is not necessarily just from a regulatory side. It's control of our trade dress, our trademark, customer service, the good will of the company to the traveling public, the airport regulatory agencies.

Q So that's the type of control you were referring to?

A That, and in addition to the standard compliance with federal, state, local regulatory rules and regulations, yes.

Q But, you understand that now you're required to exercise that same control over independent contractors; that is, to make sure they are abiding by the regulations of the same agencies?

A Oh, yes, absolutely.

Q I assumed you do that?

A Yes.

Q Will the franchisees be considered to be independent contractors; will the agreement say, you are an independent contractor?

A It says that you are an independent business person, you're not an employee.

Q Is an independent business person the same, in your view, as an independent contractor?

A Independent owner/operator, yes.

Q The same?

A Yes, within the confines of franchising. It's a business relationship for a defined period of time.

Q You have a defined business relationship now with your drivers, correct?

A Not to the same . . .

Q In fact, you have two different documents?

A Not to the same extent that a franchise program offers.

Q For example, the franchisee, he'll be able to accept trips or not accept trips, correct?

A Yes.

Q That's the same as an independent contractor driver, correct?

A Yes, but one of the primary differences is that a unit franchisee is buying a business, buying the right to operate a business under a defined trademark and trade dress and building equity in that program, and should he or she decide that he wants to transfer his franchise agreement to this son or daughter or to a neighbor, that he could have a

return on his investment, which is not afforded in an independent contractor relationship.

(TT. p. 173, lines 10 through p. 175, line 19; emphasis added). It is, at the end of the day, the “. . . defined business relationships for a defined period of time” which the Petitioner herein wishes the PUC to approve. The ultimate tension and issue which the PUC must concern itself with is whether or not the specific “business relationship” under scrutiny in this case vests sufficient regulatory control with the certificated carrier such that the rules and regulations of the PUC will be met by the carrier and enforced by the carrier to the benefit of the public passengers using the proposed service. The method by which the relationship between the driver/franchisee and the certificated carrier is defined is not as important as the regulatory rights and controls preserved for the carrier.

SuperShuttle Pittsburgh has, in fact, been in operation using the same drivers, vehicles, reservation, dispatch, maintenance, inspection, insurance and regulatory requirements as proposed under the pending franchise agreement. The only difference is that the drivers are not franchisees but are, instead, independent contractors. The record is devoid of any regulatory issues from the PUC or Airport Authority since operations began in May 2009.

Petitioner seeks to institute a contractual relationship between the certificated carrier and the driver, which it knows, from 28 years of operational experience, to be the best method of operating a safe, profitable and cost effective means of public transportation. The franchise agreement, under the terms, documents and agreements proposed herein, is specific and unique to the business of regulated airport transfer service. Further, as stated by both Ms. Robertson and Mr. Camplongo:

Q And, that leads to the issue, do you change the documents that we have set before you, Exhibit B; do those - - are those revised from time to time?

A Every year they are updated with then current information. There are 23 disclosure requirements required by the FTC, and amongst those disclosure requirements are current financial information, current statistical data on existing operating franchisees and former franchisees, litigation, airport contract information, any changes to any sort of regulatory rule or regulation.

Q So, let me make sure that we're clear. If the Pennsylvania Public Utility Commission were to require there be certain changes to the documents that are before you as Exhibit B, is SuperShuttle in a position to change the documents to comply with Public Utility Commission regulations, FTC regulations, Airport regulations, whatever needs to be done to bring you into compliance; is that within your bailiwick?

A Yes.

Q So, to the extent that there would be information in Exhibit B that needed to be changed or a requirement that needed to be changed, you've done that in the various locations throughout the country?

A Yes. Each operating city's unit franchise agreements are customized and custom-tailored for their particular operating environment and their regulatory environment.

Q For instance, if in Pennsylvania, if there is a difference between the Public Utility Commission insurance requirement for operations similar to SuperShuttle versus an insurance requirement for the Airport Authority at the Greater - - at the Pittsburgh International Airport, you're in a position to change the documents or amend the documents to be compliant with both entities, if necessary?

A Yes, and the documents would be written in such a manner that the *most stringent* of the requirements is the one that would be the guiding factor.

Q So, for instance, if Public Utility Commission required a million dollars worth of insurance on each SuperShuttle vehicle and the Airport Authority required two million dollars worth of insurance, the SuperShuttle vehicles would be insured for two million dollars?

A Yes.

(TT. p. 110, line 21 to p. 112, line 14). The key point is that the franchise documents can be revised to incorporate compliance with all regulatory requirements while maintaining the fundamental “independent business operator” status of the franchisee.

Turning to the proposed documents and the method of franchise operations, it is the position of SuperShuttle/Airlines Acquisition that those documents actually provide greater and more detailed regulatory compliance for the franchisee than any other proposed relationship between the carrier and the driver.

Initially, the franchisees are given detailed training and orientation as per the Unit Franchise Agreement (Petitioner Exhibit B, Tab D, p. 7) and are given a Unit Franchise Operations Manual (see Petitioner Exhibit B) which details all service and operational requirements. In multiple places throughout those documents, regulatory compliance is required of the franchisee and, importantly for the PUC, compliance and enforcement of the franchisees obligation to comply with regulatory requirements remains vested with the certificated carrier. The carrier retains the obligation of ultimate regulatory compliance and has the right to discipline or terminate – immediately – any franchisee who violates any regulatory requirement. As succinctly stated by Ms. Robertson:

Q Backing up to the issue of control of the operations, are there provisions in the documents, and I really am trying to stay away from - - I think the documents can be read, but are there provisions in the documents that provide for the termination of the franchise agreement in the event that the franchisee does not comply with PUC, airport or FTC or any other regulation that might apply to the operations?

A Yes.

\* \* \*

Q Just turn your attention to page 21 where it deals with termination, are there provisions for termination of the franchisor

agreement based on failure to comply with regulatory rules and regulations?

A Yes, sir.

Q Throughout the document, again without running the point into the ground, but, I mean, there's four or five pages after page 21 which deal with termination, method of termination, reasons for termination. The SuperShuttle franchisor-franchisee arrangement is relatively stringent; is it not?

A It is.

Q And, throughout the course of the documents, there are requirements that the driver franchisee comply with all of the rules and regulations of the franchisor and all the regulatory, and I've beat this horse about 400 times, requirements, local, state, airport authority, anything that's there?

A Yes.

(TT p. 122, lines 10-18; p. 124, line 12 through p. 125, line 5).

The training of the driver also involves the use of the REZ Central reservation system for the dispatching of all trips. Drivers must use only the REZ Central dispatching system and are not permitted to develop their own "personal" clientele. (TT p. 119, lines 14-20).

The franchise system, as per the Unit Franchise Agreement set forth in Petitioners Exhibit B, is the best and most effective way of delivering service to the public because it maintains regulatory compliance while allowing the franchisee to be an independent business owner, building equity in his own franchise. The franchisee's hard work services the public good and motivates him to work harder for his own personal gain. (TT p. 116, line 3 through p. 117, line 6). Ms. Robertson testified:

Q Do you find that there is a benefit to the public through better service because the franchisees are incentivized to operate their own vehicles for the betterment of both themselves and the public?

MR GRAY: Objection, Your Honor, it calls for speculation and it's really argument for brief.

MR. MIDDLEMAN: That's her opinion after 28 years in the business.

JUDGE CORBETT: I'll overrule the objection.

THE WITNESS: Historically, there is, for lack of a better word, evidence that the franchisees take a more vested interest in the operation of their business and how they conduct their services.

They maintain and take better care of the vehicles than someone who doesn't have a vested interest in that vehicle or in their business. Customer service levels, historically, have been maintained at a higher level because franchisees want those repeat customers. It's not just well, we'll service this customer today and if they come back next month, you know, maybe we'll get the business, maybe we won't.

Franchisees have a built-in incentive to make sure that the franchise systems works and the transportation as a whole works and that it's not called under scrutiny for customer service or for compliance with rules and regulations of any sort.

They also recognize that there is a benefit to being represented by a large company, whether it be Airlines Acquisition or the SuperShuttle Transportation System.

(TT p. 190, line 7 through p. 191, line 10).

Better customer service with incentivized drivers has lead to a nationwide reputation and level of success that has made the SuperShuttle brand widely recognized and highly respected.

The evidence at trial further demonstrates that there is greater safety for the public passenger through the use of the franchise model. As Mr. Campolongo testified:

Q To your way of thinking and in your assessment of the franchisor/franchisee operational format, do you believe that the public is put in any further risk, any greater risk or a lesser risk through the operation of franchisee/franchisor?

A It's really to the contrary. I think that the public will be better served through the franchise model. It's - - you engage people with a

capital investment in the business. I think from the SuperShuttle's years of experience, they found that the delivery of service and the standard of that delivery of service is always better when the driver has a vested interest in the system, so I would think that the public would be better served rather than harmed by this change.

Q Ms. Robertson testified about the control provisions in the franchise documents. Can you address, in your view and experience, whether there is significant control vested in the documents with respect to the certificated carrier having control over the operation of the vehicle?

A Currently, I mean, the carrier is responsible for keeping the drivers in control and being in control of the drivers and all subsequent operations of the company. I think we've done that and we continue to do that. Under the franchise agreement, it actually goes far and above the control that could be construed as proper control under the Public Utility Commission.

The franchise document is much more over-reaching on the driver and it goes to things on delivery - - the actual style of the delivery of service, the dress code of the driver, the manner in which they collect fees, so I think at the end of the day you get a system which has far exceeded the control requirements of the Public Utility Commission.

(TT p. 199, line 20 through p. 201, line 3).

With respect to supervision of the franchisee drivers, it is clear that the certificated carrier is able to exert even greater control than is presently seen in other PUC authorized methods of operation. The franchisee, as already established, must use the REZ Central dispatch system. That system, which flows through the certificated carrier, Airlines Acquisition, allows Airlines Acquisition to know the present status of any of the 22 SuperShuttle Pittsburgh vans potentially in service. It also permits Airlines Acquisition to know, daily, how many trips were handled; what the fares were; which vehicle handled the trips and like information. All billing and payment is handled by and through the certificated carrier except in the event of tips or gratuities made directly to the franchisee. The PUC regulated entity provides the dispatching system,

reservation system, trip generating system, cashier system, credit card processing system and the vehicle marking. As Ms. Robertson stated:

Q Now, when the independent contractor is assigned the trips, as soon as he accepts the, is there any information provided at that point in times to Airlines Acquisition's office that those trips have been taken?

A They're accepted via the Nextel, which is tied to the computer program, or the mobile data terminal in the vehicle, so yes, the computer system knows exactly when a trip has been accepted.

Q I'm not sure I - - I'm either - - maybe I didn't make my question clear. Does Airlines Acquisition know, at a particular time, that a vehicle has been assigned a trip, and if not, when does it become aware of it?

A Airlines Acquisition is not sitting in front of a computer terminal monitoring the activity. Dispatchers are aware of it. They see that there are 13 vehicles in service and that eight of them have accepted business and they're inbound to the airport or they're outbound from the airport.

Q The REZ Central dispatchers are aware of it?

A No, sir, the Pittsburgh dispatchers.

Q Are there Pittsburgh dispatchers that are involved in dispatching of these vehicles?

A Yes, sir.

Q I thought all of the vehicles that went through REZ Central were dispatched through REZ Central?

A No, sir. The reservations are all processed through REZ Central. The reservations are then sent out to each city per their respective city and dumped into the computerized dispatch system.

Q And, where is that located?

A For Pittsburgh, it's in the Liverpool office.

Q So then, it's someone in the Liverpool office that's making the decision as to whether vehicle A or vehicle B or vehicle C gets the assignment?

A No, sir. The trips in the dispatch system are grouped together through the computer program, and, again, the computer program, by virtue of the physical action of the vehicle operator, knows that a vehicle is available for service. The GPS system in the vehicle tells the dispatch system where that vehicle is. The dispatch system says, I have two pickups where van 115 is, so I am going to send these two customers to be picked up to that van.

Q The dispatch system is somebody sitting in the Liverpool office?

A There are dispatchers sitting front of the computer system and they - - in front of computer screens and they do monitor those dispatched trips, but the computer system is what does the compiling except for on an exception-basis or ASAPs, like I mentioned earlier, where there is physical intervention by the dispatcher. The preponderance of the dispatch activity is conducted through the computer systems and dispatchers monitor that.

Q So, I guess perhaps the question I should have asked then is, in a given week, if vehicle number 115, as an example, were to receive ten or twelve different trips, the actual number of trips and the revenues generated would not be known to Airlines Acquisition until the weekly reports come in, pursuant to the agreement?

A No. Someone could pull it up on a daily basis.

Q If they wanted to?

A If they wanted to.

Q And, how would they pull it up, on the computer?

A Yes.

Q Would the actual revenue and the number of trips transported by that independent contractor be shown on the computer?

A There may be a few exception to this, but yes, all inbound trips are by advance reservation with a fare, a tariff, added to it. All outbound trips from the airport are handled through the - - either advance reservations or through the ticket counter at the airport, and any walk-up passenger - - walk up customer at the airport has to go to the ticket counter. They are issued a ticket, so the revenue is there.

(TT p. 151, line 14 through p. 154, line 13).

Clearly, the control of all fare collection/billing and dispatching of trips gives Airlines Acquisition more information about its franchise operators than that which is seen with respect to cab drivers or other forms of operation that allow for the driver to be paid in cash or to be hired directly by street hail.

Finally, the use of the REZ Central dispatch system allows the carrier to determine its revenue for purposes of reporting to the PUC. This would facilitate payment of the yearly PUC assessment without conjecture or speculation. Mr. Campolongo testified that he believes that 100 percent of the SuperShuttle Pittsburgh revenue would be reported to the PUC for assessment purposes – even though SuperShuttle Pittsburgh would retain only 25 percent of the total revenue generated by the operations of the franchisees. (TT p. 237, lines 1-8).

SuperShuttle Pittsburgh also utilizes “on the road” supervisors to trouble shoot for franchisees and to ensure that all operations are being smoothly run. (TT p. 241, lines 7-14).

As a further means of tracking franchisee activity, the mobile data unit/dispatching system installed in each vehicle allows the franchisee and the carrier to maintain a “log” or “manifest” of daily operating activity including the starting and end point of each trip; the time of the trip; the route of the trip; the fares; the passenger names and other data. (TT p. 243, lines 7-20).

There can be no question that the franchise documents and the prescribed method of operation vests with Airlines Acquisition significant regulatory control over the franchisees operations. Clearly:

1. Franchisees must comply with all PUC, Airport Authority and PennDOT regulations;
2. Franchisees may only lease to purchase or purchase operate one of just 6 specific vehicle types using specific trade dress;

3. Franchisees must use only REZ Central dispatching through Airlines Acquisition;
4. Franchisees may not have “personal” clientele;
5. The mobile data dispatching system can track all trips in detail;
6. GPS installed in all vehicles facilitates instant location of all franchisees;
7. All fares, except gratuities, are handled via payment to or through REZ Central and Airlines Acquisition;
8. Franchisee operators are more motivated to operate safely and with greater customer service than other modes of operation;
9. The certificated carrier is ultimately responsible for franchise driver compliance with PUC and Airport Authority regulations;
10. Franchise Agreements are terminable by the certificated carrier for failure to comply with regulatory requirements;
11. Franchisees cannot own their vehicles until they take them out of service; and
12. PUC assessments are to be based on total franchisee revenue, which can be tracked by the SuperShuttle/REZ Central system.

Overall, the regulatory control over the franchise drivers – their training, supervision, location, method of operation are all under the responsibility of the certificated carrier. While they are independent businessmen, franchisees operate under a Unit Franchise Agreement that requires the delivery of a quality product in a professional, safe and economic fashion.

Unlike the facts set forth in the McQuaide v. PUC case cited above, the Unit Franchisee Agreement vests regulatory control with the certificated carrier and provides that SuperShuttle Pittsburgh handles all reservations, dispatch and collection of revenue/billing. SuperShuttle Pittsburgh also knows where each vehicle is and what business the franchisee is conducting at every given moment. The franchisee, while independent, must avail himself of the trade dress and method of operation required by the Unit Franchisee Agreement as developed over 28 years of operational experience.

The essence of the business relationship between SuperShuttle/Airlines Acquisition and the franchisee/drivers is that the certificated carrier functionally, if not actually, has regulatory possession, control and use of the equipment during the time that the drivers are operating. While certainly not an employee, agent or servant of the carrier, the franchisee chooses to operate his franchise under a written agreement that requires regulatory compliance and safe, consistent and cost effective service.

**V. Conclusion**

For the foregoing reasons, the PUC should allow SuperShuttle Pittsburgh to operate under the proposed Unit Franchise Agreement.

**VI. Proposed Findings of Fact**

1. Airlines Acquisition, Inc. t/d/b/a SuperShuttle Pittsburgh is a carrier certified by the Public Utility Commission to provide airport transfer service in over 13 counties in Western Pennsylvania (Petitioner's Exhibit A).

2. Airlines Acquisition has been granted City Licensee status by SuperShuttle Franchise Corporation, a wholly owned subsidiary of SuperShuttle International, Inc., to franchise, via Unit Franchise Agreements, SuperShuttle Pittsburgh franchises. (TT pp. 141-144).

3. Airlines Acquisition t/d/b/a SuperShuttle Pittsburgh initially began operations, through the granting of 10 franchises, in Allegheny County on May 1, 2009. (TT p. 138).

4. Airport transfer services in Allegheny County are not regulated by the PUC (52 Pa.Code §41.13).

5. Airlines Acquisition t/d/b/a SuperShuttle Pittsburgh changed from a franchise model of operation to an independent contractor model of operation during the pendency of the

within Petition. This was undertaken in anticipation of expansion of service into those counties outside of Allegheny County. (TT p. 140).

6. SuperShuttle Pittsburgh presently operates using a nationwide toll free phone number, internet and worldwide web reservation system known as REZ Central. REZ Central is located in Tempe, Arizona. (TT. pp. 119 - 121).

7. SuperShuttle Pittsburgh requires all drivers to use one of 6 types of vehicles configured to accommodate 8-10 passengers. (Petitioner's Exhibit B, pp. 18-19).

8. All vehicles are uniformly painted blue with yellow trade dress. (TT p. 116).

9. All vehicles are equipped with mobile data transmitters/computers, and GPS. (TT p. 241).

10. Drivers may only take customers received through REZ Central and may not develop their own personal clientele. (TT p. 119).

11. REZ Central dispatches through Airlines Acquisition which monitors the operations of all franchisees through GPS tracking. (TT pp. 151-154).

12. All revenue and trip information for each franchisee is available daily through the Airlines Acquisition dispatchers. (TT p. 153).

13. Drivers "cashier" once per week at which time a visual inspection of their vehicles is made by Airlines Acquisition. (TT p. 234).

14. All revenue, except for cash tips, is paid by the passenger to SuperShuttle Pittsburgh which handles all fare reconciliations through REZ Central. (Petitioner's Exhibit B).

15. Under the Unit Franchise Agreement, franchisees are required to comply with all state and local regulatory agency rules and regulations. (TT pp. 109-111).

16. SuperShuttle Pittsburgh has the ability to alter the Unit Franchise Agreement to comply with PUC and Airport Authority rules and regulations. (TT p. 111).

17. SuperShuttle Pittsburgh has been in continuous operation in Western Pennsylvania for over a year and has handled tens of thousands of trips without incident. (TT p. 121).

18. Ultimate compliance with PUC and Airport Authority regulations rests with Airlines Acquisition as the certificated carrier. (TT p. 114).

19. Airlines Acquisition would pay all fines levied against any franchisee. (TT pp. 114; 144; 199).

20. Airlines Acquisition could terminate the franchise of any particular operator if that operator violated PUC or Airport Authority regulations. (TT pp. 121-125).

21. Airlines Acquisition owns all vehicles used in SuperShuttle service. (TT pp. 126-127).

22. All SuperShuttle Pittsburgh vehicles are insured under a master insurance policy exceeding PUC insurance requirements. (TT pp. 126-127).

23. Vehicle ownerships may transfer to a franchisee only after the vehicle is paid for and taken out of service. (TT pp. 128-129).

24. Franchisees must undergo initial SuperShuttle training. (Petitioner Exhibit B).

25. Franchisees can be located instantaneously through the vehicle GPS tracking system. (TT p. 241).

26. The daily activities of all franchisees can be monitored by dispatchers at Airlines Acquisition including location, trips, fares, revenue and availability. (TT pp. 151-154).

27. The Unit Franchise Agreement provides the franchisor with significant regulatory control over the franchise. (Petitioner's Exhibit B).

**VII. Conclusions of Law**

1. The finding of W.C. McQuaide v. Pa. Public Utility Commission, 629 A.2d 272 (Pa.Comm. 1993) are inapplicable to the instant Petition.

2. That the Unit Franchise Agreement as developed and used by SuperShuttle Pittsburgh provides the certificated carrier with sufficient regulatory control over the vehicle and franchisee so as to allow the carrier to fulfill its oversight obligations.

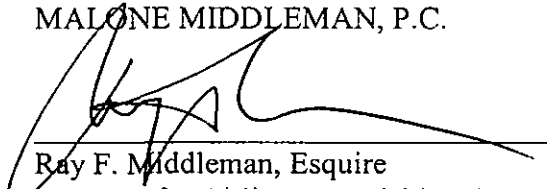
3. That "franchising" as a relative term is not expressly prohibited by the rules and regulations of the PUC.

4. That the specific franchise business relationships as outlined by the testimony of Petitioner's witnesses and the Unit Franchise Agreement is not detrimental to the provision of safe, efficient and appropriate airport transfer service to the public.

5. That the specific franchise business relationships as outlined by the testimony of Petitioner's witnesses and the Unit Franchise Agreement allow the certificated carrier sufficient regulatory control over its operating rights and does not constitute a "leasing" of its rights or equipment such that it is divested of control.

6. That Petitioner's continued operation under its Unit Franchise Agreement is in the best interest of the public which used airport transfer services.

Respectfully submitted:  
MALONE MIDDLEMAN, P.C.



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Attorney for Airlines Acquisition Company, Inc.  
t/d/b/a SuperShuttle Pittsburgh

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Brief on the following parties of record by Federal Express, overnight delivery this 25<sup>th</sup> day of March, 2011:

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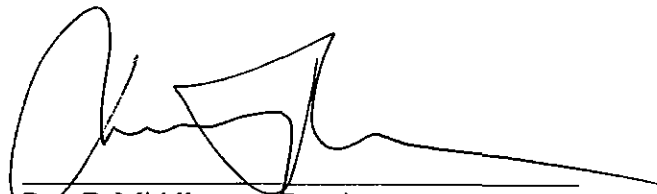
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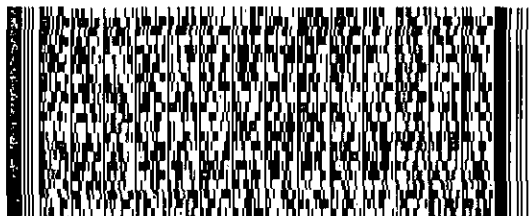
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