

DATE: February 2, 2000

SUBJECT: A-00116172

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

APPLICATION OF MAIN LINE TRANSIT SERVICE, INC.

DOCKETED

FEB 28 2000

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

NORISTOWN TRANSPORTATION COMPANY

Reply Exceptions have been received from:

MAIN LINE TRANSIT SERVICE, INC.

DOCUMENT
FOLDER

cc: Annette Shelley

SRE

LAW OFFICES
JOHN J. GALLAGHER, P.C.

JOHN J. GALLAGHER
MICHAEL S. HENRY *
LAURA C. MULDOWNNEY *
JOSEPH H. MELTZER *
LARISA TENBERG *

*ALSO MEMBER NI BAR

SUITE 1100
1760 MARKET STREET
PHILADELPHIA, PA. 19103

(215) 963-1555
FAX (215) 963-9104
E-MAIL: jjg1@ix.netcom.com

February 8, 2000

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED

FEB 08 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Application of Main Line Transit Service, Inc.
A-00116172

Dear Mr. McNulty:

Enclosed for filing are an original and nine copies of Protestant Norristown Transportation Company's Exceptions to Initial Decision Granting Motion To Dismiss Protest.

Thank you for your attention to this matter.

DOCUMENT
FOLDER

Very truly yours,

Larisa Tenberg
LARISA TENBERG

Enclosure

cc: Administrative Law Judge Wayne L. Weismandel (w/encl.)
Barnett Satinsky, Esq. (w/encl.)
Thomas M. Keenan, Esq. (w/encl.)
Main Line Transit Service, Inc. (w/encl.)

EEF

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RECEIVED

PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 08 2000

ADMINISTRATIVE LAW JUDGE WAYNE L. WEISMANDEL

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

IN RE: Application of : PUC DOCKET NO:
MAIN LINE TRANSIT SERVICE, INC. : A-00116172

EXCEPTIONS TO THE INITIAL DECISION DISMISSING PROTEST OF
NORRISTOWN TRANSPORTATION COMPANY

AND NOW, comes Protestant Norristown Transportation Company, by and through its undersigned counsel, and makes the following Exceptions to the Initial Decision Dismissing Protest of Norristown Transportation Company, and in support thereof avers the following:

1. By notice published in the Pennsylvania Bulletin on September 25, 1999, Main Line Transit Service, Inc. (hereinafter "Applicant") sought the approval of transfer and exercise of common carrier or contract rights under the transfer of the paratransit rights under the certificate issued at A-00089018, F.4. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A".

2. On October 14, 1999, Norristown Transportation Company (hereinafter "Protestant") filed a protest to the Transfer Application. A true and correct copy of the protest is attached hereto as Exhibit "B".

3. On November 8, 1999, the applicant filed a Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. A true and correct copy of the Applicant's Motion to Dismiss The Protest of Norristown

DOCUMENT
FOLDER

DOCKETED

FEB 09 2000

Transportation Company Or, In The Alternative, Motion In Limine is attached as Exhibit "C" hereto.

4. On December 20, 1999, Protestant filed a Reply to Applicant's Motion to Dismiss. A true and correct copy of the Protestant Norristown Transportation Company's Reply to Applicant's Motion To Dismiss The Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine is attached as Exhibit "D" hereto.

5. On January 20, 2000, Applicant's Motion To Dismiss was granted. A true and correct copy of ALJ Wayne L. Weismandel's decision is attached as Exhibit "E" hereto.

6. In granting Applicant's motion to dismiss, Judge Weismandel concluded that Norristown Transportation Company's Protest shall be dismissed because the Protest filed raised only one ground; that the granting of the Application "will have an adverse impact on [protestant] in that [protestant] and applicant will be in direct competition with one another for the transportation of passengers." See Exhibit A, p. 6. Moreover, Judge Weismandel concluded that Applicant's Motion was not untimely filed because of the lack of service of the Protest on Applicant's attorney. See Exhibit A, pp. 9-12.

7. Judge Weismandel erroneously concluded that Applicant's Motion was not untimely filed.

8. Applicant's Motion should have been filed on or before November 8, 1999. 52 Pa. Code §§5.101(b), 5.61(a), 3.381(c)(1)(i)(C), 1.56 (a)(1), 1.56(b).

9. In fact, Applicant's Motion was filed and served on December 8, 1999, apparently one month late.

10. Judge Weismandel's conclusion that Protestant's service of its Protest was defective because of lack of service on Applicant's attorney is erroneous.

11. Protestant's knowledge about Applicant's transfer application came from the notice published in Pennsylvania Bulletin, Vol. 29, No. 39, on September 25, 1999.

12. The notice did not state Thomas M. Keenan, Esq. as Applicant's attorney. In fact, the notice did not list any attorney at all. See Exhibit A.

13. The fact that Thomas M. Keenan, Esq. was shown as Applicant's attorney on the Application is irrelevant since the notice did not publish his name and the Protestant was not in possession of the Application.

14. As such, Protestant complied with 52 Pa. Code §§3.381(C)(1)(I)(A), 5.52(b), by serving the protest on the applicant. The Certificate Of Service attached to the Protest certified that a copy was served upon the applicant.

15. Therefore, the protest was timely filed and properly served.

16. Since the protest was properly served, Applicant's Motion was untimely filed, one month late, and thus should have been dismissed as untimely filed. 52 Pa. Code §3.381(C)(3).

17. Because Applicant's Motion was untimely filed and, in accordance with the rules of Public Utility Commission, should have been dismissed, Judge Weismandel's discussion of the grounds raised in Protest becomes irrelevant.

18. Applicant bears the burden to demonstrate that it possesses fitness whether or not the issue of fitness was raised in the protest. See 52 Pa. Code §41.14(b); RE O'Connor, 54 Pa.P.U.C. 547 (1980); In re: L. Joseph Williams t/d/b/a Executive

Limousine Serv., 78 Pa.P.U.C. 41 (1993); In re: Erie Transp. Servs., Inc., 72 Pa.P.U.C. 113 (1990).

19. The issue of fitness especially becomes important when Protestant's investigation revealed that Applicant's principle is operating illegally under the authority granted. Moreover, the investigation revealed that part of the authority has been abandoned.

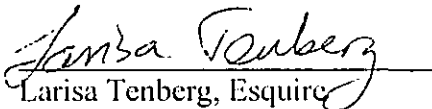
20. Furthermore, where there is a proof of abandonment of the certificate of public convenience, the applicant is still required to prove necessity. Byerly v. Pa Public Utility Commission, 440 Pa. 521, 270 A.2d 186 (1970).

21. When the proof of necessity becomes applicable, the evidence of adverse impact becomes relevant. 52 Pa. Code §41.14(C).

22. Based on the foregoing, the motion was erroneously granted and the decision of ALJ Weisman del should be reversed.

Respectfully submitted.

LAW OFFICES OF JOHN J. GALLAGHER, P.C.

BY: 
Larisa Tenberg, Esquire
Attorney for Protestant
Norrstown Transportation Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2000, I mailed by first class mail, postage prepaid, a copy of the foregoing Exceptions To The Initial Decision Dismissing Protest Of Norristown Transportation Company via first class mail:

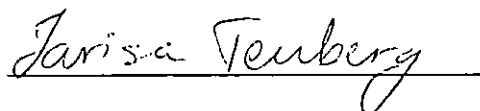
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Administrative Law Judge Wayne L. Weismandel
P.O. Box 3265
Harrisburg, PA 17120

Barnett Satinsky, Esquire
Fox, Rothchild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103

Thomas M. Keenan
Keenan, Ciccitto & Brant
376 East Main Street
P.O. Box 19426
Collegeville, PA 19426

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

An initial hearing on this matter will be held Thursday, October 28, 1999 at 10 a.m. in an available hearing room, Ground Floor, North Office Building, North Street and Commonwealth Avenue, Harrisburg, PA, when and where all persons in interest may appear and be heard, if they so desire.

JAMES J. MCNULTY,
Secretary

[Pa. B. Doc. No. 99-1649, Filed for public inspection September 24, 1999, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before October 18, 1999, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protests shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.

A-00116178. East Coast Van Service, Inc. (8321 Mansfield Avenue, Suite 300, Philadelphia, PA 19150), a corporation of the Commonwealth of Pennsylvania—persons, in paratransit service between points in the city and county of Philadelphia, and the counties of Chester, Bucks, Delaware and Montgomery.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.

— A-00116172. Main Line Transit Service, Inc. (303 East Church Road, King of Prussia, Montgomery County, PA 19406), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, (1) for Morgan's Run Corporation, from the Radnor Train Station and the Radnor P & W Train Station, in the township of Radnor, Delaware County, to the Radnor Corporate Center in said township, and vice versa; subject to the following conditions: That all service shall be provided in vehicles having a seating capacity of not less than 15 persons, excluding the driver; and that transportation shall be for the account of one party for which the charge is based upon the transportation of a group and not upon the number of persons transported and for which payment is made by a group, organization or company and not by the passengers as individuals; and (2) between points in the townships of Upper Merion, Lower Merion and the borough of Narberth, Montgomery County; and the townships of Radnor, Haverford, Marple and Newtown, Delaware County; subject to the following conditions: That service shall be provided in vehicles without the use of taxi meters or dome lights; that service is limited to the

transportation in a vehicle not limited to individual use, for which reservations are made not later than the previous calendar day; and that service may be performed in vehicles having a seating capacity of 25 passengers or less, excluding the driver; which is to be a transfer of the paratransit rights authorized Bennett Taxi Service, Inc., under the certificate issued at A-00089018, F. 3, subject to the same limitations and conditions.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under each application.

A-00116130, F. 2. Pittsburgh Transportation Company, Inc. (5931 Elsworth Avenue, Pittsburgh, Allegheny County, PA 152065), a corporation of the Commonwealth of Pennsylvania—additional right—persons upon call or demand. (1) in the borough of Brentwood, and the townships of Bethel, Upper St. Clair and Snowden, Allegheny County; (2) in the township of Baldwin, the borough of Whitehall, and that portion of the township of Jefferson, all in Allegheny County, bounded and described as follows: Beginning at a point common to Jefferson Township, Snowden Township and Baldwin Township, thence from said point of beginning along the line dividing Snowden Township from Jefferson Township to Highway Route 02085; thence along Highway Route 02085 in a northeasterly direction to the Mowery, Gill Hall and Cochrans Mill Road; thence along said road to Highway Route 072; thence along Highway Route 072 and the Coal Valley Road to Highway Route 51; thence in a northwesterly direction along Highway Route 51 to Highway Route 02113, thence along Highway Route 02113 to the line dividing Jefferson Township for West Mifflin Borough; thence along said township line to a point common to Jefferson Township, Baldwin Township and West Mifflin Borough; thence along the Jefferson Township-Baldwin Township line to the place of beginning; including the borough of Pleasant Hills; (3) in that portion of the borough of West Mifflin, Allegheny County, bounded and described as follows: Beginning at a point at the southwesterly corner of West Mifflin Borough, at a point common to Jefferson Borough and Baldwin Borough; thence along a line dividing West Mifflin and Baldwin Borough, to a point on a line dividing property now or formerly of Terminal Coal Company and property of Charles Davis; thence along said dividing line and along a line dividing property now or formerly of Willock Land Company from property of Carnegie Illinois Steel Corporation, in a southeasterly direction to State Highway Route 885 and Monongahela, Southern Railroad, also known as the Union Railroad; thence in a northeasterly direction along the line of the Union Railroad and along the northerly line of the Municipal Airport property, to Buttermilk Hollow Road; thence along Buttermilk Hollow Road in a southerly direction to Lebanon Church Road; thence in a southwesterly direction along Lebanon Church Road to the Jefferson Borough line, thence along the Jefferson Borough line in a northerly direction to the point at place of beginning; (4) in the borough of Castle Shannon; (5) in the borough of Finleyville, Washington County; and within a radius of 5 miles thereof; and (6) in the city of Pittsburgh, Allegheny County; which is to be a transfer of the call or demand rights of Mayflower Contract Services, Inc., authorized under the certificate issued at A-00108838, F. 1, subject to the same limitations and conditions. Attorney: Ray F. Middleman.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A.00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY

TO THE APPLICATION OF

MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).
2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.
3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.
4. Applicant is seeking the right to transport persons in paratransit service between points in, counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.

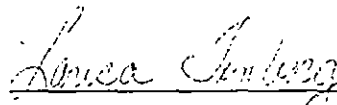
5. If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

7. Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand in made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Main Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE
Attorney for Protestant

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

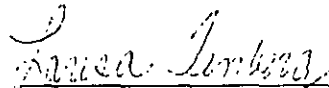
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARIS TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg

LARISA TENBERG, ESQUIRE

DATE: 10/14/99

CERTIFICATE NO. 11111111
FOLDER 1

Paratransit - Pa.P.U.C. No. 1
Lancets
Paratransit - Pa.P.U.C. No. 2

NORRISTOWN YELLOW CAB CO., INC.

FARES AND RULES
GOVERNING THE
TRANSFORMATION OF
PERSONS

(as designated herein)

ISSUED: August 21, 1995

EFFECTIVE: September 21, 1995

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Norristown, PA 19301
(610) 277-1234

LIST OF CHANGES MADE BY THIS TARIFF

Rules and Regulations Rule 2 - Days and Hours of Operation is changed from 7:00 A.M. to 10:00 P.M. TO READ 6:00 A.M. TO 6:00 P.M.

OPERATING AUTHORITY

To transport, as a common carrier, persons in paratransit service between points in the borough of Norristown, Montgomery County, and within an airline distance of five (5) statute miles of the limits of said borough, excluding the boroughs of Conshohocken and West Conshohocken, and the township of Whitmarsh, all in Montgomery County.

Subject to the following conditions:

- a. That the service herein authorized is limited to transportation in vehicles having a seating capacity not to exceed fifteen (15) persons including the driver.
- b. That the service herein authorized is limited to transportation in a vehicle not reserved for individual use, for which advanced reservations are made not later than the previous calendar day.
- c. That no right, power or privilege is granted to provide scheduled route service as defined in 52 Pa Code §29.14.
- d. That no right, power or privilege is granted to transport persons in group and party service as defined in 52 Pa Code §29.16.
- e. That no right, power or privilege is granted to operate vehicles equipped with taximeters or dome lights.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates:

Six zones are established and are color coded. (See Map) Rates range from \$3.50 to \$17.00 depending on the number of zones travelled (See Page 3 for rates within each zone and between zones).

2. Days and Hours of Operation: (C)

Service is available every day, holidays included, from 6:00 A.M. to 6:00 P.M.

3. Advance Notices:

Advance reservations must be made no later than the previous day of when service is to be rendered.

4. Waiting Time:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 15% of the shared ride rate (rounded upward to the nearest \$.05); provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate under the provisions of Section 704, of Act 36 of 1991 (the Lottery Fund Preservation Act)>

6. Contract Services:

Contract services provided will be for a term of not less than 30 days for prequalified persons under a federal, state, county or municipal governmental agency contract. Rates for the services will be specified in the respective contracts, copies of which, including any amendments thereto, are to be filed with the Commission as executed, to become effective on one day's notice.

(C) Indicates change or addition



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
 REFER TO CASE FILE

JANUARY 11, 1997

A-10106633, P. 4

RAYMOND A. WISTLE JR. ESQUIRE
 SUITE 3
 726 FITZWATER TOWN ROAD
 WILLOW GROVE PA 19080-1180

APPLICATION OF NORRISTOWN TRANSPORTATION
 A CORPORATION OF THE COMMONWEALTH OF PENNSYLVANIA

Enclosed is the compliance order issued by the Commission in this proceeding.

The Certificate of Public Convenience evidencing the Commission's approval of the right to operate will not be issued until the applicant has prepared and filed a tariff, instructions for which are enclosed.

No motor carrier shall operate or engage in any transportation until compliance with the above requirement and a certificate of public convenience has been issued authorizing actual operations. Motor carriers operating without complying with the above requirement will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with the above requirement within sixty (60) days of the date of this letter. Failure to comply within sixty (60) day period will cause the Commission to rescind the action of January 16, 1997, and dismiss the application without further proceeding.

Very truly yours,

John G. Alford, Secretary

sak
 encls.
 cert. mail
 receipt requested:
 Tariff Contact: 717, 717-5347
 NORRISTOWN TRANSPORTATION CO
 41 BURNSIDE AVENUE
 NORRISTOWN PA 19403

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 16, 1997

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice-Chairman
John Hanger
David W. Rolka
Robert K. Bloom

Application of Norristown Transportation Company, a corporation of the Commonwealth of Pennsylvania, for the additional right, to transport as a common carrier by motor vehicle, persons in paratransit service, between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough and the township of Whitemarsh, all in Montgomery County.

A-00106639
F. 4

Raymond A. Thistle, Jr. for the applicant.
Thomas, Thomas, Armstrong & Niesen by Patricia Armstrong
for protestant, Krapf's Coaches, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 22, 1996. Public notice of the application was given in the Pennsylvania Bulletin of April 27, 1996. A single protest was received by the above-mentioned carrier. The now unopposed application is certified to the Commission for its decision without oral hearing. The record consists of verified statements entered by the applicant and six supporting parties.

Nicholas Chermela, general manager of Norristown Transportation Company (applicant or Norristown Trans) is authorized to make this statement on behalf of the applicant. Chermela has been employed by applicant for twenty (20) years and is familiar with all phases of applicant's operations. The sole shareholder of applicant is Frank Smith. Frank Smith owns 100% of the common capital stock of applicant and also owns 100% of the common capital stock of Norristown Yellow Cab Co., Inc. at

Danielle Eberhardt, assistant manager of Manor Care Health Services (supporting shipper or Manor Care) is authorized by Rhonda Nelson, activities director, to make this statement on behalf of the supporting witness. The supporting party is a health care provider and nursing home seeking paratransit transportation to meet its needs to serve its residents, some of whom are handicapped. It is anticipated that the supporting party will use the applicant's service on a basis of at least once every two weeks with the number of persons each trip averaging four to five. The origin point for the transportation is Manor Care located at 600 West Valley Forge Road, Upper Merion Township, Montgomery County. The destination points are the Country Buffet located in East Norriton Township and Valley Forge Park located in Upper Merion Township, Montgomery County, and return.

Sally Schmidt is a registered nurse and the primary nurse for the care of Judge Frederick B. Smillie residing at 1630 Sandyhill Road, Norristown, Montgomery County. Nurse Schmidt is in charge of arranging for the outings of the judge and, by reason of her duties and authority, is authorized to make this statement in support of the application. The judge requires transportation at least once every week and has used paratransit service for the past five years. The origin would be his residence as noted above and destination points of these trips are to the doctors at Montgomery County Hospital, Norristown, Plymouth Meeting Mall, Plymouth Township and King of Prussia Plaza, Upper Merion Township, all in Montgomery County, and return.

Patricia Moir, executive director of Suburban Transit Network, Inc. (supporting party or Trans Net) located at 960 Harvest Drive, Suite 100, Whitpain Township, Montgomery County, is authorized to present this verified statement in support of the application. The primary function of Trans Net is a health care provider of transportation services; however, it does coordinate corporate transportation service as well. Trans Net is the PennDOT coordinator for Montgomery County and is also a Pa. P.U.C.-licensed passenger broker that also coordinates the transportation of persons in paratransit service in Montgomery County. It is Trans Net's intent to utilize applicant's paratransit service within the scope of the territory sought as amended, for approximately twenty-one thousand (21,000) trips with return transportation required, per month, each month of the year. The supporting party has an existing and continuous need for paratransit service.

The following is a list of origin points, almost every trip is on a return basis, destination points, the type of facility, medical or corporate or individual involved. The listing is a sampling of past, present and future paratransit needs of Trans Net. Support is for transportation between points

DISCUSSION AND FINDINGS

Norristown Transportation Company is a common carrier currently certificated by this Commission to transport persons upon call or demand, parcels and packages, blood and blood products and medicine in taxicabs. Norristown seeks the additional right to transport persons in paratransit service between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough, and the township of Whitemarsh, all in Montgomery County. The application was opposed by a single carrier which withdrew upon restrictive amendment excluding the right to provide transportation to, from or between points in Chester County.

The territory encompassed within an airline distance of five (5) statute miles of the borough of Norristown includes the following boroughs and townships within Montgomery County: the boroughs of West Conshohocken, Conshohocken and Bridgeport and the townships of Whitemarsh, Norriton, Plymouth, Worcester, Lower Providence, West Norriton, Upper Merion, Whitpain and Lower Merion.

Falling within five statute miles of the limits of Norristown are fringe areas of other townships in Montgomery County. Also included within five statute miles of the borough of Norristown is a small portion of Chester County. The application has been amended to exclude transportation to, from and between points in Chester County.

The area of application as amended has been supported by four (4) individuals, one (1) nursing care facility and one (1) Montgomery County coordinator that proposes to tender applicant approximately twenty-one (21,000) paratransit trips on a return basis. We find that the application has been amply supported by the parties.

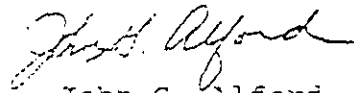
We find that:

1. Applicant currently operates pursuant to common carrier certificates issued by this Commission in 1986.
2. The application was opposed and the protest was withdrawn upon restrictive amendment.
3. Six supporting parties have demonstrated a need for the service as amended.
4. The applicant has the necessary equipment, experience and fitness necessary to render the amended service.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above-determined.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 16, 1997

ORDER ENTERED: JAN 20 1997

Certificate No. A.00100317
Folder 2

Paratransit - Pa. P.U.C. No. 4
Cancels
Paratransit - Pa. P.U.C. No. 3

CONSHOHOCKEN YELLOW CAB CO.

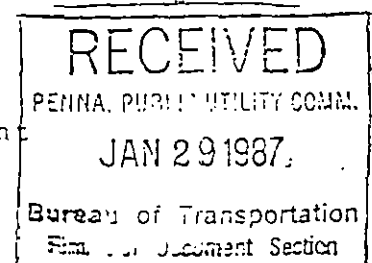
RATES AND RULES
GOVERNING THE
TRANSPORTATION OF

(As Designated Herein)

ISSUED: January 29, 1987

EFFECTIVE: February 28, 1987

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Norrissetown, Pa. 19401
Phone: (215) 277-1234



OFFICIALLY FILED TARIFF

LIST OF CHANGES MADE BY THIS TARIFF.

Shared ride grid rates are discontinued and zone rates are established.

OPERATING AUTHORITY - A. 100317, F. 2

To transport, as a common carrier, persons in paratransit service, between points in the boroughs of Conshohocken and West Conshohocken and the township of Whitemarsh, Montgomery County.

Subject to the following conditions:

1. That the service herein authorized is limited to transportation in vehicles having a seating capacity of not more than fifteen (15) persons, including the driver, without the use of dome lights and taximeters.
2. That the service herein authorized is limited to transportation in vehicles not reserved for individual use for which advance reservations are made not less than the previous calendar day.
3. That no right, power or privilege is granted to transport persons in group and party service, as defined in the Pennsylvania Code, Title 52, Chapter 29.16.
4. That no right, power or privilege is granted to provide scheduled route service as defined in the Pennsylvania Code, Title 52, Chapter 29.14.
5. That the applicant shall post in all vehicles, which the applicant operates under the authority held at A-00100317, F.1, notice of the availability of the herein authorized and the tariff for said service. Notice shall be posted in a conspicuous place in the interior of the vehicle.

VAN RATES

On calls up to and including eight (8) miles in any direction from the nearest garage or office and return:

14-passenger vans, per hour, per vehicle	\$ 23.00
9 to 13 passenger vans, per hour, per vehicle	20.00
Wheelchair vans, per hour, per vehicle	24.00

On calls beyond eight (8) miles in any direction from the nearest garage or office, and return:

14-passenger vans, per mile, per vehicle	\$ 1.15
9 to 13 passenger vans, per mile, per vehicle	1.00
Wheelchair vans, per mile, per vehicle	1.50

NOTE:

1. Mileage is calculated by the odometer of the vehicle used.
2. At least 24 hours advance notice must be given.
3. Rates are applicable seven (7) days a week, holidays included, between the hours of 7:00 A.M. and 10:00 P.M.
4. When hourly rates are charged there will be a one-hour minimum. Partial hours, after the first hour, will be calculated in quarter-hour intervals.
5. Contract services for a term not less than 30 days to provide the transportation requirements of pre-qualified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.
6. The total charges under this section are divisible by the number of persons carried per trip and are payable on a per person basis only.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates: (C)

Six zones are established and are color coded. (See Map) Rates range from \$4.00 to \$16.00 depending on the number of zones travelled (See Page for rates within each zone and between zones).

2. Days and Hours of Operation:

Service is available every day, holidays included, from 7:00 A.M. to 10:00 P.M.

3. Advance Notices:

Advance reservations must be made no later than the previous calendar day.

4. Waiting Time:

First five (5) minutes - no charge.

After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be \$.25 or 10% of the shared ride rate (rounded to the nearest \$.0 or \$.05), whichever is greater; provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate in the senior citizen program under Section 203, Act 101 (1980), as amended by Act 49 (1984). amended by Act 49 (1984).

6. Contract Services: (C)

Contract services for a term of not less than 30 days, to provide the transportation requirements of prequalified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.

(C) Indicates change or addition

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
: :
TRANSIT SERVICE, INC. :

APPLICANT MAIN LINE TRANSIT SERVICE,
INC.'S MOTION TO DISMISS THE PROTEST OF
NORRISTOWN TRANSPORTATION COMPANY
OR, IN THE ALTERNATIVE, MOTION IN LIMINE

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby moves the Pennsylvania Public Utility Commission (the "Commission") to dismiss the protest of Norristown Transportation Company ("Norristown") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3). In support thereof, Main Line avers the following:

1. On or about July 27, 1999, Main Line filed with the Commission an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" hereto.
2. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower

Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

3. On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" hereto. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

4. Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3).

5. Pennsylvania courts and the Commission have recognized two bases upon which a transfer application can be denied: (1) lack of fitness; and (2) abandonment. See 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993); In re: Erie Transp. Servs., 72 Pa. P.U.C. 113 (1990).

6. Norristown's Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit operating authority, or that Bennett has abandoned that operating authority; rather, the Protest merely avers that approval of the Transfer Application will have an adverse impact on Norristown's business.

7. Although 52 Pa. Code § 41.14(a) provides that an applicant seeking motor common carrier authority must show a public demand or need for the service, it is presumed that the demand or need, once found, continues to exist at the time that the applicant seeks to transfer that authority to a new carrier. 52 Pa. Code § 41.14(a); South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

8. The presumption of continuing necessity is rebuttable; however, neither the Commission nor the Pennsylvania courts consider a protestant to have met its burden to rebut the presumption where, as here, the sole basis of the protest is merely that approval of the transfer application will adversely impact the protestant's business.

9. In fact, the Commission has stated that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

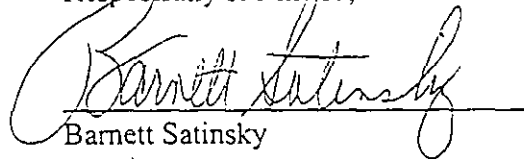
10. Moreover, Pennsylvania cases that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the transferor is not currently providing the service. See, e.g., In re: Bverly, 270 A.2d 186, 189 (Pa. 1970) ("[t]he fact that a carrier has not transported the certificated product and the fact that he has not been requested to do so does not rebut the presumption of continuing necessity"); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993) ("mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]").

11. Evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application.

12. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

13. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be precluded from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



Barnett Satinsky
Marci A. Love
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Thomas M. Keenan
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(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

APPLICATION FOR APPROVAL OF TRANSFER
AND EXERCISE OF COMMON CARRIER OR CONTRACT RIGHTS

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MAIN LINE TRANSIT SERVICE, INC.
(Applicant/Transferee-Buyer)

for the approval of the transfer and to exercise the right

as a Common carrier, described at Docket
(common-contract)

No. A-00089018, Folder No. 2, Am-D, issued to

BENNETT TAXI SERVICE, INC.
(Transferor - Seller)

for transportation of Persons in paratransit service
(persons-household goods)

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. MAIN LINE TRANSIT SERVICE, INC.
(full and correct name of applicant/transferee)

2. MAIN LINE TRANSIT SERVICE, INC.
(Trade name, if any)

The trade name HAS been registered with the Secretary of the Commonwealth
(has or has not)

on June 14, 1998 (attach copy of stamped registration form).
(date)

3. 303 East Church Rd.
(Business street address) (P.O. Box, if any)

King of Prussia, Pennsylvania
(City) (County) (State) 19406 610 277 9536
(zip) (Telephone)

4. Applicant's attorney (for this application) is:
376 East Main Street
Thomas M. Keenan, Esq., P.O. Box 26460, Colleceville, PA 19426 - (610) 49
(Name) (Address) (Telephone) 60

5. Any documents should be mailed to:

Transferee: Clifford Kingsley 303 E. Church Rd. King of Prussia, Penna. 19406
(Name) (Address)

Transferor: Bennett Taxi Service Inc. P.O. Box 342 Bryn Mawr, Penna. 19010
(Name) (Address)

6. Applicant does not hold Pa. P.U.C. authority under Docket Number
(does or does not)

A- _____ and operates as a _____ carrier.
(common or contract)

7. Applicant does not hold Interstate Commerce Commission authority at Docket No. _____
(does or does not)

8. Applicant is (check one):

Individual.

Partnership. Must attach a copy of the partnership agreement (unless a copy is presently on file with PUC), and list names and addresses of partners below (use additional sheet if necessary).

(Name)

(Address)

Corporation. Organized under the laws of the state of Pennsylvania
and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth
on June 14, 1960 (Attach copy of Certificate of Incorporation or Authority and statement of
charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses
and number of shares held by each stockholder.

9. If applicant, its stockholder or partnership members are in control of or affiliated with any other carrier, state
name of carrier(s), Docket Number(s) and nature of control or affiliation.

10. Applicant proposes to acquire part of the operating rights now held by transferor. Attach sheet
(all or part)
describing rights to be transferred to applicant and rights to be retained by transferor, if any. If any rights are to
be omitted give reasons.

11. The reason for the transfer is Asset Acquisition

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A 00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY

TO THE APPLICATION OF

MAIN LINE TRANSIT SERVICE INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).

2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19406.

3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.

4. Applicant is seeking the right to transport persons in paratransit service between points in counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.

LAW OFFICES
SUITE 1100 • 1760 MARKET STREET • PHILADELPHIA, PA 19103

EXHIBIT "B"

5 If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 62 P.S. Code 3.361.

7 Pursuant to 303(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Metro Line Transit Service Inc.

Respectfully submitted,



LARISA TENSBERG, ESQUIRE
Attorney for Protestants

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

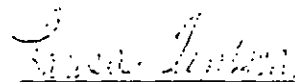
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Petition of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

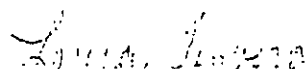
Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARIS TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



LARISA TENBERG, ESQUIRE

DATE: 10/14/03

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
: :
TRANSIT SERVICE, INC. :

BRIEF OF APPLICANT MAIN LINE TRANSIT SERVICE, INC.
IN SUPPORT OF ITS MOTION TO DISMISS THE PROTEST
OF NORRISTOWN TRANSPORTATION COMPANY

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby submits the following brief in support of its motion to dismiss the protest of Norristown Transportation Company ("Norristown") (the "Motion") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).

I. BACKGROUND

On or about July 27, 1999, Main Line filed with the Pennsylvania Public Utility Commission (the "Commission") an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" to the Motion. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower Merion and the borough of Narberth,

Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" to the Motion. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

The Commission should dismiss Norristown's Protest with prejudice because it is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).¹ Specifically, the Commission has found that where the presumption of continuing necessity applies, evidence of adverse impact is not a sufficient basis upon which to deny a transfer application. Insofar as adverse impact represents the sole basis of Norristown's Protest, the Protest is deficient and should be dismissed. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be barred from introducing any evidence of adverse impact at a hearing with respect to the Protest.

¹ Section 5.101(a)(3) of the Pennsylvania Code provides in relevant part, "A preliminary motion is available to participants . . . and shall be limited to . . . [a] motion to dismiss a pleading that is insufficient as to substance." 52 Pa. Code § 5.101(a)(3).

II. ARGUMENT

A. Evidence Of Adverse Impact Is Not A Sufficient Basis Upon Which To Deny A Transfer Application.

Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). In a transfer proceeding, the applicant bears the burden to demonstrate that it possesses the technical and financial fitness to perform the proposed service. See 52 Pa. Code § 41.14(b); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

The Commission and Pennsylvania courts recognize two bases upon which a transfer application can be denied. First, the Commission can deny a transfer application where it finds that the applicant does not possess the technical and financial ability to provide the proposed service. 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Alternatively, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Here, the Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit authority,² or that Bennett has abandoned that authority.³

² Although not placed in issue by Protestant, Main Line's fitness can hardly be challenged, as it will be owned and operated by Clifford and Barbara Kingsley, who have successfully owned and operated another certificated paratransit company, Tri County Transit Service, Inc. for many years. This fact is well known to Norristown's owners, who are related to Mrs. Kingsley. Furthermore, Norristown, Tri County and Bennett all are members of Suburban Transit Network, Inc. t/d/b/a Transnet, which is designated by the Pennsylvania Department of Transportation as the Senior Citizen Shared Ride Coordinator for Montgomery County, Pennsylvania, and is responsible for providing a system of coordinated paratransit services to Montgomery County residents.

³ Even if the Protest did aver that Bennett had abandoned the proposed service, such an averment would not withstand scrutiny. Abandonment requires proof that the carrier intended to abandon the service "together with

Rather, the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business. As demonstrated below, such evidence, standing alone, is insufficient to justify denial of a transfer application.

Section 41.14(a) of the Public Utility Code provides that an applicant seeking motor common carrier authority must show a public demand or need for the service. 52 Pa. Code § 41.14(a). In reality, this subsection addresses the standards applicable to a request for new operating authority. In a transfer proceeding, it has long been held that the applicant does not need to prove that there exists a public demand or need for the underlying service to be transferred; rather, it is presumed that the demand or need, having previously been found, continues to exist at the time of the transfer. South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). This presumption is called the "presumption of continuing necessity," and it applies where the acquiring carrier proposes to provide a service that does not differ from the service that had been provided by the transferring carrier. In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).⁴

In theory, the presumption of continuing necessity can be rebutted by a protestant to a transfer application. However, neither the Commission nor the Pennsylvania courts consider that a protestant has met its burden to rebut the presumption where, as here, the sole basis of the

external acts by which that intent [was] carried into effect." In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). Here, the record will show without a shadow of a doubt that pursuant to its paratransit authority, Bennett has provided, and continues to provide, in excess of 2,500 paratransit trips each month to senior citizens and other eligible riders. Once again, the suggestion that Bennett's rights have been abandoned and therefore cannot be transferred is ludicrous.

protest is merely that approval of the transfer application will adversely impact the protestant's business. In fact, the Commission has stated precisely the opposite; namely, that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

Moreover, Pennsylvania courts that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the carrier is not currently providing the service. For example, in In re: Bverly, the protestant argued that there was no public demand or need for the proposed service because the transferor had never "transported any building supplies, building materials [sic], sand or gravel and that since 1965 he received no requests to nor did he in fact transport any coal." In re: Bverly, 270 A.2d 186, 189 (Pa. 1970). Rejecting this argument, the Pennsylvania Supreme Court stated that "[t]he fact that a carrier has not transported the certificated product and that fact that he has not been requested to do so does not rebut the presumption of continuing necessity." Id. The Commission reached the similar conclusion several years later in In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Here, after reaffirming that the presumption of continuing necessity applies in transfer proceedings, the Commission concluded that "mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]." Id.

⁴ Main Line seeks to provide services identical to those provided by Bennett.

The Commission's finding that adverse impact is not a sufficient basis upon which to deny a transfer application, coupled with the Pennsylvania Supreme Court's conclusion that the frequency of services provided does not accurately reflect the "public need" for the service, reflects that evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

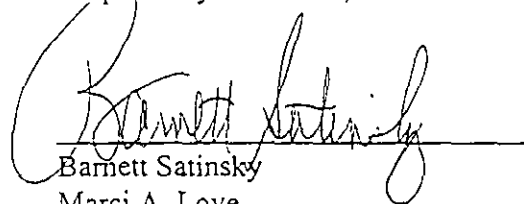
B. In The Alternative, Norristown Should Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.

As discussed in Section II(A) above, the Commission has found that where the presumption of continuing necessity is applicable, evidence of adverse impact, i.e. that Norristown's business will suffer if the Transfer Application is approved, is irrelevant in the context of a transfer proceeding. Accordingly, if the Motion to Dismiss is not granted at this time, Norristown nevertheless should be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

III. CONCLUSION

For all of the foregoing reasons, Main Line respectfully requests that the Commission dismiss Norristown's Protest with prejudice or, in the alternative, preclude Norristown from introducing evidence of adverse impact at a hearing with respect to the Protest.

Respectfully submitted,



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P.O. Box 19426
Collegeville, PA 19426
(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

ORDER

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that the Protest is DISMISSED with prejudice.

, J.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
: :
TRANSIT SERVICE, INC. : :

ORDER

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. It is further ORDERED that Norristown is precluded from introducing any evidence of adverse impact in support of its Protest to the Transfer Application.

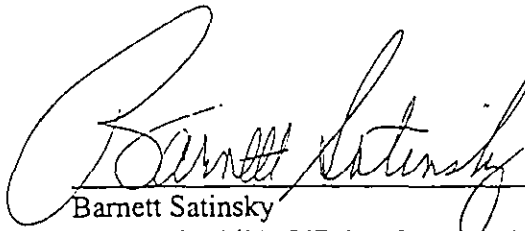
, J.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail, postage prepaid, true copies of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company, or in the Alternative, Motion in Limine, together with Brief and proposed forms of Order in connection therewith, upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg
Law Offices of John J. Gallagher, P.C.
Suite 1100
1760 Market Street
Philadelphia, PA 19103
Attorney for Protestant
Norristown Transportation Company

Dated this 8th day of December, 1999

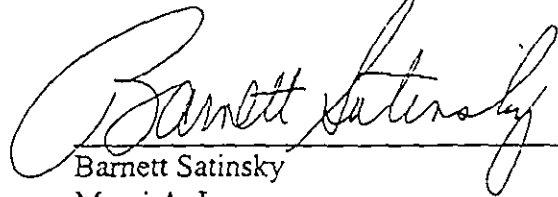

Barnett Satinsky
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2000 Market Street, 10th Floor
Philadelphia, PA 19103
Attorney for Applicant

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE TRANSIT : DOCKET NO.
SERVICE, INC. :
: A-00116172

NOTICE OF APPEARANCE

Please enter our appearance in the above-designated matter as co-counsel on behalf of the Applicant. We are authorized to accept service on behalf of said participant in this matter. On the basis of this notice, we request a copy of each document hereafter issued by the Commission in this matter.



Barnett Satinsky
Marci A. Love
Fox, Rothschild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
(215) 299-2088

Attorneys for Applicant
Main Line Transit Service, Inc.

Date: December 8, 1999

EXHIBIT C

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

PROPOSED ORDER

AND NOW, this day of , 1999, upon consideration of
Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or,
In The Alternative, Motion In Limine and Protestant's Response thereto. it is hereby
ORDERED that said Motion is DENIED.

BY THE COURT:

J.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

PROTESTANT NORRISTOWN TRANSPORTATION
COMPANY'S REPLY TO APPLICANT MAIN LINE TRANSIT SERVICE
INC.'S MOTION TO DISMISS THE PROTEST OF NORRISTOWN
TRANSPORTATION COMPANY OR, IN THE ALTERNATIVE, MOTION IN
LIMINE

Protestant, Norristown Transportation Company ("Protestant"), by and through its undersigned counsel, hereby submits the Reply to the Applicant Main Line Transit Service, Inc.'s ("Applicant") Motion to Dismiss the Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. In support thereof, Protestant avers the following:

1. Admitted.
2. Admitted.
3. Denied. The Protest is in writing and therefore speaks for itself.
4. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
5. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
6. Denied. The issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its

protest or not. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

7. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself. Furthermore, the presumption of continuing necessity is rebuttable.

8. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

9. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

10. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required.

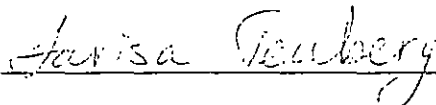
11. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

12. Denied. The protest is in writing and therefore speaks for itself. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not. Furthermore, Protestant intends to present evidence of lack of fitness and abandonment.

13. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied.

Respectfully submitted,



BY: LARISA TENBERG, ESQUIRE
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

**BRIEF OF PROTESTANT NORRISTOWN TRANSPORTATION COMPANY
IN SUPPORT OF ITS REPLY TO MAIN LINE TRANSIT SERVICE, INC.'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION IN LIMINE**

Protestant, by and through its undersigned counsel, hereby submits the following brief in support of its Reply to Applicant's Motion to Dismiss the Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine.

BACKGROUND

By notice published in the Pennsylvania Bulletin on September 25, 1999, Applicant sought the approval of transfer and exercise of common carrier or contract rights under the transfer of the paratransit rights under the certificate issued at A-00089018, F.4. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A".

On or about October 14, 1999, Protestant filed a protest to the Transfer Application. A true and correct copy of the protest is attached hereto as Exhibit "B".

On or about November 8, 1999, the applicant filed a Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. A true and correct copy of the Applicant's Motion to Dismiss The Protest of Norristown

Transportation Company Or. In The Alternative, Motion In Limine is attached as Exhibit "C" hereto.

ARGUMENT

I. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied because the motion was untimely filed.

Pennsylvania Public Utility Commission treats a protest as a pleading. As such, the applicant may file a motion to dismiss within 20 days after the closing date for the filing of protests. 52 Pa. Code § 3.381(c)(3).

Protestant filed its protest on October 14, 1999. A true and correct copy of the protest is attached hereto as Exhibit "B". The closing date for the filing of protests was October 18, 1999. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A". As such, the deadline for filing a motion to dismiss was November 8, 1999. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine was filed on or about December 8, 1999, i.e., one month after the deadline. A true and correct copy of the Applicant's Motion is attached hereto as Exhibit "C".

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine should be denied as untimely filed.

II. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied because

**Protestant Has Standing To Protest The Application Of Main Line Transit Service
Based On Applicants Lack Of Fitness.**

Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). However, the applicant bears the burden to demonstrate that it possesses fitness to perform the proposed service. See 52 Pa. Code § 41.14(b). Fitness encompasses three concepts: the applicant must possess the technical and financial ability to provide the proposed service, and authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. RE O'Connor, 54 Pa.P.U.C. 547 (1980). *The Commission can deny a transfer application where it finds that the applicant did not meet the above requirements.* 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa.P.U.C. 41(1993). Also, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Based on the above, even though Main Line filed an Application for Approval of Transfer, Applicant still bears the burden to demonstrate that it possesses fitness, whether or not the issue of fitness was raised in the protest. Protestant's investigation revealed that applicant's principle is operating illegally under the authority granted. Moreover, the investigation revealed that part of the authority has been abandoned.

WHEREFORE, Applicant's Motion to Dismiss Or, In The Alternative, Motion In Limine shall be denied.

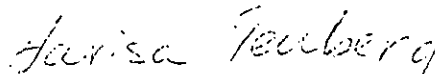
III. In The Alternative, Norristown Should Not Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.

In cases involving applications for transfer of motor carrier rights under a certificate of public convenience, the applicant need not prove necessity, but rather there is a presumption of continuing public need for the service authorized by the certificate. Bveriv v. Pa. Public Utility Commission, 440. Pa. 521, 270 A.2d 186 (1970). However, this presumption is rebuttable. Where there is a proof of abandonment of the certificate of public convenience, the applicant is still required to prove necessity. Id. When the proof of continuing necessity becomes applicable, the evidence of adverse impact becomes relevant. 52 Pa. Code § 41.14 (c).

Based on Protestant's investigation, Applicant abandoned at least part of its authority. As such, evidence of adverse impact becomes relevant in the context of a transfer proceeding.

WHEREFORE, Protestant should not be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



BY: LARISA TENBERG, ESQUIRE
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

CERTIFICATE OF SERVICE

I, hereby certify that on this 20th day of December, 1999, I mailed by first class mail, postage prepaid, a copy of the Reply to the Applicant's Motion to Dismiss The Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine to:

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

Barnett Satinsky, Esquire
Fox, Rothchild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103

Thomas M. Keenan
Keenan, Ciccitto & Brant
376 East Main Street
P.O. Box 19426
Collegeville, PA 19426


LARISA TENBERG, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A.00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY
TO THE APPLICATION OF
MAIN LINE TRANSIT SERVICE, INC.

1. *Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).*
2. *Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.*
3. *Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.*
4. *Applicant is seeking the right to transport persons in paratransit service between points in, counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.*

5. if the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 P.S. Code 3.381.

7. Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Main Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE
Attorney for Protestant

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

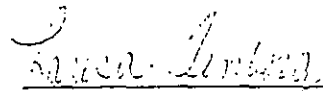
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARISA TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg
LARISA TENBERG, ESQUIRE

DATE: 10/14/99

UNIVERSITY MICROFILMS
SERIALS

DEPARTMENT OF PUBLIC HEALTH
LANDS
DEPARTMENT OF PUBLIC HEALTH

PROFESSIONAL REGULATION ACT, 1984

RATES AND RULES
GOVERNING THE
TRANSPORTATION OF
PERSONS

(as designated herein)

ISSUED: August 21, 1985

EFFECTIVE: September 21, 1985

ISSUED BY: Honorable J. S. ...
At ...
...
... 17-1134

LIST OF CHANGES MADE BY THIS TARIFF

Rules and Regulations Rule 2 - Days and Hours of Operation is changed from 7:00 A.M. to 12:00 P.M. TO FROM 6:00 A.M. TO 6:00 P.M.

OPERATING AUTHORITY

To transport, as a common carrier, persons in paratransit service between points in the borough of Norristown, Montgomery County, and within an airline distance of five (5) statute miles of the limits of said borough, excluding the boroughs of Conshohocken and West Conshohocken, and the township of Whitmarsh, all in Montgomery County.

Subject to the following conditions:

- a. That the service herein authorized is limited to transportation in vehicles having a seating capacity not to exceed fifteen (15) persons including the driver.
- b. That the service herein authorized is limited to transportation in a vehicle not reserved for individual use, for which advanced reservations are made not later than the previous calendar day.
- c. That no right, power or privilege is granted to provide scheduled route service as defined in 32 Pa Code §29.14.
- d. That no right, power or privilege is granted to transport persons in group and party service as defined in 32 Pa Code §29.15.
- e. That no right, power or privilege is granted to operate vehicles equipped with taximeters or time lights.

1. Fare Rates:

Six zones are established and are color coded. (See Map) Rates range from \$3.50 to \$17.00 depending on the number of zones travelled (See Page 3 for rates within each zone and between zones).

2. Days and Hours of Operation: (C)

Service is available every day, holidays included, from 6:00 A.M. to 6:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous day of when service is to be rendered.

4. Waiting Time:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 15% of the shared ride rate (rounded upward to the nearest \$.05); provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate under the provisions of Section 704, of Act 38 of 1991 (the Lottery Fund Preservation Act)

6. Contract Services:

Contract services provided will be for a term of not less than 30 days for prequalified persons under a federal, state, county or municipal governmental agency contract. Rates for the services will be specified in the respective contracts, copies of which, including any amendments thereto, are to be filed with the Commission as executed, to become effective on one day's notice.

(C) Indicates change or addition



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3166, HARRISBURG, PA 17105-3166

JANUARY 11, 1997

REGULATORY DIVISION

AP-11116600, P.4

RAYMOND A. LITTLE JR. PRESIDENT
 SUITE 1
 100 HARRISBURG AVENUE
 HARRISBURG, PA 17101-1101

APPLICATION OF MORRISTOWN TRANSPORTATION
A SUBSIDIARY OF THE COMMONWEALTH OF PENNSYLVANIA

Enclosed is the compliance order issued by the Commission in this proceeding.

The Commission's approval of the right to operate will not be issued until the applicant has prepared and filed a certificate, instructions for which are enclosed.

No motor carriers shall operate or engage in any transportation until compliance with the above requirement and a certificate of public convenience has been issued authorizing actual operations. Motor carriers operating without compliance with the above requirement will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with the above requirement within sixty (60) days of the date of this letter. Failure to comply within sixty (60) day period will cause the Commission to rescind its action of January 15, 1997, and require the application without further proceedings.

Very truly yours,

Tom J. Allen, Secretary

WJK
 WJA
 WJL
 WJM
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3268

Public Meeting held January 16, 1997

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice-Chairman
John Hanger
David W. Roika
Robert K. Bloch

Application of Norristown Transportation Company, a corporation of the Commonwealth of Pennsylvania, for the additional right, to transport as a common carrier by motor vehicle, persons in paratransit service, between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough and the township of Whitmarsh, all in Montgomery County.

A-00106839
P. 4

Raymond A. Thistle, Jr. for the applicant.
Thomas, Thomas, Armstrong & Niesen by Patricia Armstrong
for protestant, Krapf's Coaches, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 22, 1996. Public notice of the application was given in the Pennsylvania Bulletin of April 27, 1996. A single protest was received by the above-mentioned carrier. The now unopposed application is certified to the Commission for its decision without oral hearing. The record consists of verified statements entered by the applicant and six supporting parties.

Nicholas Chermela, general manager of Norristown Transportation Company (applicant or Norristown Trans) is authorized to make this statement on behalf of the applicant. Chermela has been employed by applicant for twenty (20) years and is familiar with all phases of applicant's operations. The sole shareholder of applicant is Frank Smith. Frank Smith owns 100% of the common capital stock of applicant and also owns 100% of the common capital stock of Norristown Yellow Cab Co., Inc. et

DISCUSSION AND FINDINGS

Norristown Transportation Company is a common carrier currently certificated by this Commission to transport persons upon call or demand, parcels and packages, blood and blood products and medicine in vehicles. Norristown seeks the additional right to transport persons in paratransit service between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough, and the township of Whites Marsh, all in Montgomery County. The application was opposed by a single carrier which withdrew upon restrictive amendment excluding the right to provide transportation to, from or between points in Chester County.

The territory encompassed within an airline distance of five (5) statute miles of the borough of Norristown includes the following boroughs and townships within Montgomery County: the boroughs of West Conshohocken, Conshohocken and Bridgeport and the townships of Whites Marsh, Norristown, Plymouth, Worcester, Lower Providence, West Norristown, Upper Merion, Whitpain and Lower Merion.

Falling within five statute miles of the limits of Norristown are fringe areas of other townships in Montgomery County. Also included within five statute miles of the borough of Norristown is a small portion of Chester County. The application has been amended to exclude transportation to, from and between points in Chester County.

The area of application as amended has been supported by four (4) individuals, one (1) nursing care facility and one (1) Montgomery County coordinator that proposes to tender applicant approximately twenty-one (21,000) paratransit trips on a return basis. We find that the application has been amply supported by the parties.

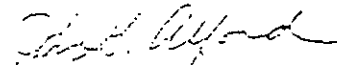
We find that:

1. Applicant currently operates pursuant to common carrier certificates issued by this Commission in 1986.
2. The application was opposed and the protest was withdrawn upon restrictive amendment.
3. Six supporting parties have demonstrated a need for the service as amended.
4. The applicant has the necessary equipment, experience and fitness necessary to render the amended service.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinafore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinafore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above-determined.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 16, 1997

ORDER ENTERED: JAN 20 1997

Certificate No. A.00100317
Folder 2

Paratransit - Pa. P.U.C. No. 4
Cancels
Paratransit - Pa. P.U.C. No. 3

CONSHOHOCKEN YELLOW CAB CO.

RATES AND RULES
GOVERNING THE
TRANSPORTATION OF
(As Designated Herein)

ISSUED: January 29, 1987

EFFECTIVE: February 28, 1987

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Morristown, Pa. 19401
Phone: (215) 277-1234

RECEIVED
PENNA. PUBLIC UTILITY COMM.
JAN 29 1987
Bureau of Transportation
Film & Document Section

OFFICIALLY FILED TARIFF

WV RATES

On calls up to and including eight (8) miles in any direction from the nearest garage or office and return:

14-passenger vans, per hour, per vehicle	\$ 20.00
9 to 11 passenger vans per hour, per vehicle	15.00
Wheelchair vans, per hour, per vehicle	14.00

On calls beyond eight (8) miles in any direction from the nearest garage or office, and return:

14-passenger vans, per mile, per vehicle	\$ 1.15
9 to 11 passenger vans, per mile, per vehicle	1.00
Wheelchair vans, per mile, per vehicle	1.50

NOTES:

1. Mileage is calculated by the odometer of the vehicle used.
2. At least 24 hours advance notice must be given.
3. Rates are applicable seven (7) days a week, holidays included, between the hours of 7:00 A.M. and 10:00 P.M.
4. When hourly rates are charged there will be a one-hour minimum. Partial hours, after the first hour, will be calculated in quarter-hour intervals.
5. Contract services for a term not less than 30 days to provide the transportation requirements of pre-qualified persons under a Federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.
6. The total charges under this section are divisible by the number of persons carried per trip and are payable on a per person basis only.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates: (C)

Six zones are established and are color coded. (See Map) Rates range from \$4.00 to \$15.00 depending on the number of zones travelled (See Page for rates within each zone and between zones).

2. Days and Hours of Operation:

Service is available every day, holidays included, from 7:00 A.M. to 10:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous calendar day.

4. Waiting Time:

First five (5) minutes - no charge.

After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be \$.25 or 10% of the shared ride rate (rounded to the nearest \$.00 or \$.05), whichever is greater; provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate in the senior citizen program under Section 203, Act 101 (1980), as amended by Act 49 (1984), amended by Act 49 (1984).

6. Contract Services: (C)

Contract services for a term of not less than 30 days, to provide the transportation requirements of prequalified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.

(C) Indicates change or addition

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Main Line	:	Docket No.
Transit Service, Inc.	:	A-00116172

Initial Decision Granting Motion To Dismiss Protest

Before
Wayne L. Weismandel
Administrative Law Judge

History of the Proceeding

On August 5, 1999, Main Line Transit Service, Inc. (applicant) filed an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (Application) with the Pennsylvania Public Utility Commission (Commission), Docket Number A-00116172.¹ The Application sought the approval of the transfer and to exercise the right as a common carrier described at Docket Number A-00089018, Folder No. 2, Amendment D, issued to Bennett Taxi Service, Inc., for transportation of persons in paratransit service between points in the Townships of Upper Merion, Lower Merion and the Borough of Narberth, Montgomery County, and the Townships of Radnor, Haverford, Marple and Newtown, Delaware County, subject to certain restrictions. The Application listed Thomas M. Keenan, Esq., 376 East Main Street, P.O. Box 26460, Collegeville, PA 19426, telephone number (610) 489-6170, as "Applicant's attorney (for this application)".

Limine (Motion), accompanied by a Brief In Support, requesting that the Protest be dismissed as insufficient as to substance, or in the alternative, that the protestant should be precluded from introducing evidence of adverse impact in support of its Protest at any hearing in the case.²

On December 20, 1999, protestant filed and served a Reply (Reply), accompanied by a Brief In Support, to applicant's Motion. Protestant's Reply was served on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq., on behalf of the applicant. The Reply avers that "the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not." Additionally, in its Brief In Support, protestant argues that applicant's Motion should be denied because it was untimely filed.

On December 28, 1999, applicant's Motion was assigned to me for ruling. By letter dated December 28, 1999, the participants were notified by Chief Administrative Law Judge Christianson of my assignment.

Applicant's Motion is procedurally ready to be ruled upon.

Findings Of Fact

1. On August 5, 1999, applicant filed an Application for transfer of common carrier rights with the Commission, Docket Number A-00116172.

until August 31, 1999.

² The filing and serving of applicant's Motion was accepted as the report to be filed with the OALJ Mediation Coordinator in accordance with the Interim Order.

9. Protestant's Reply was served on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq., on behalf of the applicant.

Discussion

Commission preliminary motion practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A motion to dismiss a protest, as provided in 52 Pa.Code §5.101, is available to an applicant in motor transportation proceedings. 52 Pa.Code §3.381(c)(1)(i)(C).

52 Pa.Code §5.101(a)(3) provides:

A preliminary motion is available to participants. The preliminary motion shall state specifically the grounds relied upon, the standing of the party and shall be limited to the following:

A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party.

What 52 Pa.Code §5.101(a)(3) refers to as "a motion to dismiss a pleading that is insufficient as to substance" is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

It is well established that for purposes of determining preliminary objections in the form of a demurrer, the Court must accept as true all well pleaded facts and reasonable inferences which may be deduced

previously determined the issue of public necessity for the rights to be transferred.

In *App. of H. E. Shoup*, 45 PA PUC 371, 373 (1971), the commission examined the issue of competition in the context of a transfer proceeding, and stated:

The initial contention of Womeldorf, Inc., is that the protestant will be injured by competition if the application is approved. The Commission has considered the matter of competition to be irrelevant in a transfer proceeding.

The Commission has also held that adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application. *Edward R. Simpson, supra.*; and *App. of McNaughton Bros., Inc., supra.*

78 PA PUC @ 53.³

See, also, Re Erie Transportation Services, Inc., 72 PA PUC 113(1990).

Protestant's sole basis raised in the Protest for denying the instant Application being "irrelevant", applicant's Motion must be granted and the Protest dismissed.

The Commission is granted discretion to determine if a hearing is required. 66 Pa.C.S. §703(b). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law only the Commission need not hold a hearing. Lehigh Valley Power Comm. v. PA Public Utility Comm'n, 128 Pa.Commw. 259, 563 A.2d 548(1989), Edan Transportation Corp. v. PA Public Utility Comm'n, 154 Pa.Commw. 21, 623 A.2d 6(1993). This case does not involve disputed questions of fact. The question presented is one of law only. A hearing in this case is not necessary and would be a fruitless exercise.

³ Administrative Law Judge Gesoff's Initial Decision became a final Commission decision by operation of law, 66 Pa.C.S. §332(h).

Reply. It should be remembered that issues are not properly raised in a Brief, but rather, in a pleading.

Applicant's Motion should have been filed on or before the twenty-third day after service of the Protest. 52 Pa. Code §§5.101(b), 5.61(a), 3.381(c)(1)(i)(C), 1.56(a)(1), 1.56(b). That is, on or before November 8, 1999.⁴ In fact, applicant's Motion was filed and served on December 8, 1999, apparently a month late. As set forth above, however, protestant's service of its Protest was defective, and it does not stretch credulity to conclude that the lack of service on applicant's counsel contributed to the delay in preparing and filing applicant's Motion. Computations of time periods from the "date of service" presume that service was properly made. Protestant should not be heard to complain about a delay that it, at least in part, caused. Further, protestant filed and served a Reply⁵ that was received and considered before any action was taken on applicant's Motion. In the vernacular, "no harm, no foul."

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the participants in this case.

⁴ This computation uses the mailing date of October 14, 1999 set forth in the Certificate Of Service attached to the Protest, and also takes into account that the twenty-third day would have been Saturday, November 6, 1999. See, 52 Pa.Code §1.12(a).

⁵ It is noted that the Certificate Of Service attached to protestant's Reply certifies that service was made on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq..

12. In determining preliminary objections in the form of a demurrer, the Court must accept as true all well pleaded facts and reasonable inferences which may be deduced therefrom, but not conclusions of law. It is also true that a demurrer may not be sustained unless the face of the complaint shows that the law will not permit recovery, and that any doubt should be resolved in favor of overruling the demurrer. And, in ruling on a demurrer, a court may not consider facts not disclosed in the record.

13. In a transfer of motor common carrier authority case, although an acquiring applicant is technically a "new carrier", the operating authority sought to be transferred is not new authority. The Commission has previously determined the issue of public necessity for the rights to be transferred.

14. The Commission has considered the matter of competition to be irrelevant in a transfer proceeding.

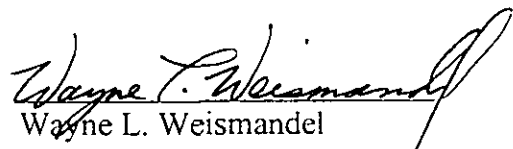
15. The Commission has also held that adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application.

16. The Commission is granted discretion to determine if a hearing is required.

17. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law only the Commission need not hold a hearing.

2. That the Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights filed on August 5, 1999, by Main Line Transit Service, Inc., Docket Number A-00116172, now being unopposed, is referred for disposition in accordance with the provisions of 52 Pa.Code §3.381(c)(1)(iii)(A).

Date: JANUARY 4, 2000


Wayne L. Weismandel
Administrative Law Judge

FOX • ROTHSCHILD
O'BRIEN & FRANKEL LLP

ATTORNEYS AT LAW

2000 MARKET STREET • PHILADELPHIA, PA 19103-3291
215-299-2000 • FAX 215-299-2150 • www.frof.com

Barnett Satinsky
Direct Dial: (215) 299-2088
Internet Address: bsatinsky@frof.com

DOCUMENT
FOLDER

February 16, 2000

VIA FEDERAL EXPRESS

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17120

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FEB 16 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

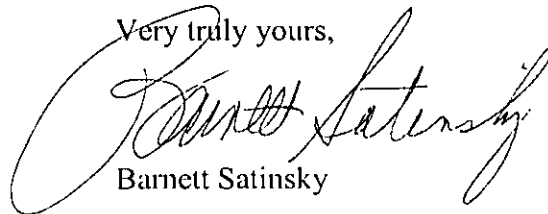
Re: Application of Main Line Transit Service, Inc.
Docket No. A-00116172

Dear Secretary McNulty:

Enclosed for filing are an original and ten copies of Applicant Main Line Transit Service, Inc.'s Reply to Exceptions of Protestant Norristown Transportation Company. Please file the original and date-stamp and return to me in the enclosed self-addressed, stamped envelope one of the copies.

Thank you for your cooperation.

Very truly yours,



Barnett Satinsky

BS:cc

Enclosures

cc: Administrative Law Judge Wayne L. Weismandel (w/encl.)
Larisa Tenberg, Esq. (w/encl.)
Mr. Clifford Kingsley (w/encl.)
Thomas M. Keenan, Esq. (w/encl.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 16 2000

APPLICATION OF MAIN LINE
TRANSIT SERVICE, INC.

:
:
:

DOCKET NO. PA 00-16172
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**APPLICANT MAIN LINE TRANSIT SERVICE, INC.'S REPLY TO EXCEPTIONS OF
PROTESTANT NORRISTOWN TRANSPORTATION COMPANY**

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby submits to the Pennsylvania Public Utility Commission (the "Commission"), pursuant to 52 Pa. Code § 5.535(a), its Reply to the Exceptions of Protestant Norristown Transportation Company to the Initial Decision of Administrative Law Judge Wayne L. Weismandel, Dismissing the Protest of Norristown Transportation Company ("Norristown"). In support thereof, Main Line avers as follows:

1. Main Line incorporates by reference paragraphs 1-3 of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company, or, in the Alternative, Motion in Limine (the "Motion"), a true and correct copy of which is attached as Exhibit "A" hereto.

2. On or about January 20, 2000, Administrative Law Judge issued his Initial Decision Granting Motion to Dismiss Protest (the "Initial Decision"). A true and correct copy of the Initial Decision dismissing Norristown's Protest is attached as Exhibit "B" hereto.

3. In granting the Motion, Judge Weismandel concluded as a matter of law that service of Norristown's Protest (the "Protest") to Main Line's Application for Approval of Transfer and Exercise of Common Carrier Rights (the "Transfer Application") was clearly deficient in that

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Norristown failed to serve the Protest on Main Line's attorney. See Exhibit B, Conclusions of Law, at ¶¶ 8-10. In addition, Judge Weismandel concluded as a matter of law that the Protest "raises no claims for which relief can be granted" because the only issue raised in the Protest, namely that approval of the Transfer Application will have an adverse impact on Norristown's business, is an insufficient basis upon which to deny a transfer application. See Exhibit B, Conclusions of Law, at ¶¶ 7, 15-16, 19-20.

4. On or about February 8, 2000, Norristown filed Exceptions to the Initial Decision Dismissing Protest of Norristown Transportation Company (the "Exceptions"). A true and correct copy of Norristown's Exceptions is attached as Exhibit "C" hereto.

5. In its Exceptions, Norristown claims that Judge Weismandel erred in concluding that service of the Protest was deficient because the notice of the Transfer Application appearing in the Pennsylvania Bulletin did not provide the name of Main Line's attorney. Accordingly, Norristown claims that it had no knowledge that Main Line was represented by counsel when it served the Protest. Second, Norristown avers that Main Line lacks fitness to provide the proposed service because Main Line's principle is operating illegally under the authority granted. Finally, Norristown avers that Main Line has abandoned part of its operating authority. See Exhibit C.

6. The Commission should deny Norristown's Exceptions because the Initial Decision is sound on both procedural and substantive grounds.

7. First, Judge Weismandel properly concluded that service of the Protest was procedurally deficient because Norristown did not serve the Protest on Main Line's attorney.

8. The Commission's Rules of Administrative Practice and Procedure provide that a protestant must serve its protest on the applicant and the applicant's attorney, if any. 52 Pa. Code §§ 3.381(c)(1)(i)(A), 5.52(b).

9. At the time the Transfer Application was filed, Main Line was represented solely by Thomas M. Keenan, Esquire, whose name also appears on the face of the Transfer Application as Main Line's attorney. A true and correct copy of the first page to the Transfer Application is attached as Exhibit "D" hereto.

10. There is no requirement that the notice in the Pennsylvania Bulletin, which is prepared for publication by Commission Staff, and not by an applicant, must contain the name of an applicant's attorney. Moreover, applications, including the Transfer Application in this case, are available for inspection upon request to the Commission. 52 Pa. Code § 1.72(c)(2).

11. Norristown has not averred that it requested, and was denied the right, to inspect the Transfer Application before it served its Protest.

12. Norristown knew, or had reason to know, the existence and identity of Applicant's counsel before Norristown filed its Protest.

13. Assuming *arguendo* that the Motion was untimely filed, 52 Pa. Code § 1.2(a) grants the Commission or any presiding officer the authority to "disregard an error or defect of procedure which does not affect the substantive rights of the parties." Id.

14. Here, Norristown does not aver that its substantive rights have been affected by Main Line's alleged failure to timely serve the Motion. In fact, on or about December 20, 1999, Norristown filed a reply to the Motion, which Judge Weismandel acknowledged in his Initial

Decision. See Exhibit B, Findings of Fact, at ¶ 8; ; see also AT&T Communications of Pa. v. Pennsylvania Pub. Util. Comm'n, 568 A.2d 1362, 1364 (Pa. Commw. Ct. 1990) (holding that AT&T did not show it was prejudiced by Commission's decision to consider untimely filed exceptions and that "justice was properly served by the PUC having done so"); In re: Suburban Transit, Inc., 68 Pa. P.U.C. 400 (1988) (assuming *arguendo* that even if exceptions were untimely served, protestant was not deprived of substantive rights because it both received exceptions and filed reply exceptions thereto).

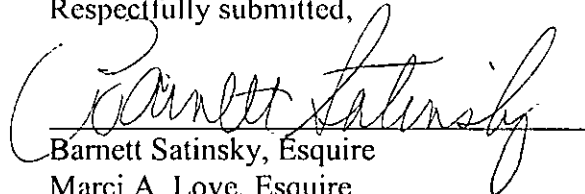
15. Because Judge Weismandel gave Norristown the opportunity to reply to the Motion and considered same in the Initial Decision, Norristown has no basis upon which it can claim that it was deprived of its substantive rights due to Main Line's alleged failure to timely file the Motion.

16. Second, Judge Weismandel properly granted the Motion on substantive grounds because as a matter of law, evidence of adverse impact is an insufficient basis upon which to deny a transfer application. Insofar as the Protest did not raise any other basis for denying the Transfer Application, Judge Weismandel properly found that Norristown had waived those issues. See Exhibit B, Conclusions of Law, at ¶¶ 5-7, 15.

17. Moreover, Judge Weismandel rejected Norristown's attempt to raise the issues of fitness and abandonment in its reply to the Motion, finding that Norristown has "confus[ed] the evidence concept of relevance with proper procedural requirements to raise issues in a particular case." See Exhibit B, Discussion, at 8. Similarly here, the Commission should reject Norristown's attempt to raise the issues of fitness and abandonment in the Exceptions because Norristown failed to raise them in the Protest.

WHEREFORE, Main Line respectfully requests that the Commission deny Norristown's Exceptions and affirm the Initial Decision so that it becomes final.

Respectfully submitted,

A handwritten signature in cursive script, reading "Barnett Satinsky", is written over a horizontal line.

Barnett Satinsky, Esquire

Marci A. Love, Esquire

Fox, Rothschild, O'Brien & Frankel, LLP

2000 Market Street

Tenth Floor

Philadelphia, PA 19103-3291

(215) 299-2088

Thomas M. Keenan

Keenan, Ciccitto & Brant

376 East Main Street

P.O. Box 19426

Collegeville, PA 19426

(610) 489-6170

Attorneys for Applicant, Main Line

Transit Service, Inc.

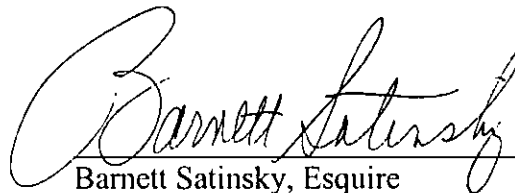
Date: February 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail, postage prepaid, true copies of Applicant Main Line Transit Service, Inc.'s Reply to Exceptions of Protestant Norristown Transportation Company upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg, Esq.
Law Offices of John J. Gallagher, P.C.
Suite 1100
1760 Market Street
Philadelphia, PA 19103
Attorney for Protestant
Norristown Transportation Company

Dated this 16th day of February, 2000



Barnett Satinsky, Esquire
Fox, Rothschild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
Attorney for Applicant, Main Line Transit
Service, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COPY

APPLICATION OF MAIN LINE

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:
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DOCKET NO.: A-00116172

TRANSIT SERVICE, INC.

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**APPLICANT MAIN LINE TRANSIT SERVICE,
INC.'S MOTION TO DISMISS THE PROTEST OF
NORRISTOWN TRANSPORTATION COMPANY
OR, IN THE ALTERNATIVE, MOTION IN LIMINE**

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby moves the Pennsylvania Public Utility Commission (the "Commission") to dismiss the protest of Norristown Transportation Company ("Norristown") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3). In support thereof, Main Line avers the following:

1. On or about July 27, 1999, Main Line filed with the Commission an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" hereto.
2. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower

Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

3. On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" hereto. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

4. Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3).

5. Pennsylvania courts and the Commission have recognized two bases upon which a transfer application can be denied: (1) lack of fitness; and (2) abandonment. See 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993); In re: Erie Transp. Servs., 72 Pa. P.U.C. 113 (1990).

6. Norristown's Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit operating authority, or that Bennett has abandoned that operating authority; rather, the Protest merely avers that approval of the Transfer Application will have an adverse impact on Norristown's business.

7. Although 52 Pa. Code § 41.14(a) provides that an applicant seeking motor common carrier authority must show a public demand or need for the service, it is presumed that the demand or need, once found, continues to exist at the time that the applicant seeks to transfer that authority to a new carrier. 52 Pa. Code § 41.14(a); South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

8. The presumption of continuing necessity is rebuttable; however, neither the Commission nor the Pennsylvania courts consider a protestant to have met its burden to rebut the presumption where, as here, the sole basis of the protest is merely that approval of the transfer application will adversely impact the protestant's business.

9. In fact, the Commission has stated that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

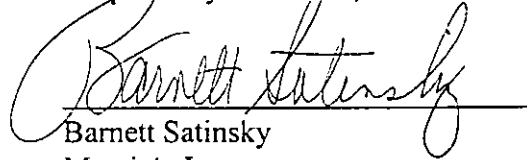
10. Moreover, Pennsylvania cases that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the transferor is not currently providing the service. See, e.g., In re: Byerly, 270 A.2d 186, 189 (Pa. 1970) ("[t]he fact that a carrier has not transported the certificated product and the fact that he has not been requested to do so does not rebut the presumption of continuing necessity"); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993) ("mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]").

11. Evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application.

12. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

13. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be precluded from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



Barnett Satinsky
Marci A. Love
Fox, Rothschild, O'Brien & Frankel, LLP
2000 Market Street
Tenth Floor
Philadelphia, PA 19103-3291
(215) 299-2088

Thomas M. Keenan
Keenan, Ciccitto & Brant
376 East Main Street
P.O. Box 19426
Collegeville, PA 19426
(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

APPLICATION FOR APPROVAL OF TRANSFER
AND EXERCISE OF COMMON CARRIER OR CONTRACT RIGHTS

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MAIN LINE TRANSIT SERVICE, INC.
(Applicant/Transferee-Buyer)

for the approval of the transfer and to exercise the right

as a Common carrier, described at Docket
(common-contract)

No. A-00089018, Folder No. 2, Am-D, issued to

BENNETT TAXI SERVICE, INC.
(Transferor - Seller)

for transportation of Persons in paratransit service
(persons-household goods)

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. MAIN LINE TRANSIT SERVICE, INC.
(full and correct name of applicant/transferee)

2. MAIN LINE TRANSIT SERVICE, INC.
(Trade name, if any)

The trade name HAS been registered with the Secretary of the Commonwealth
(has or has not)

on June 14, 199 (attach copy of stamped registration form).
(date)

3. 303 East Church Rd.
(Business street address)

(P.O. Box, if any)

King of Prussia, Pennsylvania

(City) (County) (State)

19406
(zip)

610 277 8536
(Telephone)

4. Applicant's attorney (for this application) is:

376 East Main Street

Thomas M. Keenan, Esc., P.O. Box 26460, Colleceville, PA 19425 - (610) 489-
(Name) (Address) (Telephone) 617:

5. Any documents should be mailed to:

Transferee: Clifford Kinsley 303 E. Church Rd. King of Prussia, Penna. 19406
(Name) (Address)

Transferor: Bennett Taxi Service Inc. P.O. Box 342 Bryn Mawr, Penna. 19010
(Name) (Address)

6. Applicant does not hold Pa. P.U.C. authority under Docket Number
(does or does not)

A- _____ and operates as a _____ carrier.
(common or contract)

7. Applicant does not hold Interstate Commerce Commission authority at Docket No. _____
(does or does not)

8. Applicant is (check one):

Individual.

Partnership. Must attach a copy of the partnership agreement (unless a copy is presently on file with PUC), and list names and addresses of partners below (use additional sheet if necessary).

(Name) (Address)

Corporation. Organized under the laws of the state of Pennsylvania

and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth

on June 14, 1999 (Attach copy of Certificate of Incorporation or Authority and statement of

charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses and number of shares held by each stockholder.

9. If applicant, its stockholder or partnership members are in control of or affiliated with any other carrier, state name of carrier(s), Docket Number(s) and nature of control or affiliation.

10. Applicant proposes to acquire part of the operating rights now held by transferor. Attach sheet
(all or part)

describing rights to be transferred to applicant and rights to be retained by transferor, if any. If any rights are to be omitted give reasons.

11. The reason for the transfer is Asset Acquisition

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A 00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY
TO THE APPLICATION OF
MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).

2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.

3. Norristown's attorney is Larisa Tenberg, Esquire, 1750 Market Street, Suite 1100, Philadelphia, PA 19103

4. Applicant is seeking the right to transport persons in paratransit service between points in counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return

LAW OFFICES
SUITE 1100 • 1750 MARKET STREET • PHILADELPHIA, PA 19103

EXHIBIT "B"

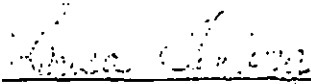
5 If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 62 PA. Code 3.381.

7 Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony, in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Man Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE
Attorney for Protestants

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

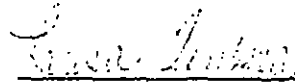
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARISA TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg
LARISA TENBERG, ESQUIRE

DATE 10/14/03

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
: :
TRANSIT SERVICE, INC. : :

**BRIEF OF APPLICANT MAIN LINE TRANSIT SERVICE, INC.
IN SUPPORT OF ITS MOTION TO DISMISS THE PROTEST
OF NORRISTOWN TRANSPORTATION COMPANY**

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby submits the following brief in support of its motion to dismiss the protest of Norristown Transportation Company ("Norristown") (the "Motion") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).

I. BACKGROUND

On or about July 27, 1999, Main Line filed with the Pennsylvania Public Utility Commission (the "Commission") an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" to the Motion. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower Merion and the borough of Narberth,

Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" to the Motion. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

The Commission should dismiss Norristown's Protest with prejudice because it is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).¹ Specifically, the Commission has found that where the presumption of continuing necessity applies, evidence of adverse impact is not a sufficient basis upon which to deny a transfer application. Insofar as adverse impact represents the sole basis of Norristown's Protest, the Protest is deficient and should be dismissed. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be barred from introducing any evidence of adverse impact at a hearing with respect to the Protest.

¹ Section 5.101(a)(3) of the Pennsylvania Code provides in relevant part, "A preliminary motion is available to participants . . . and shall be limited to . . . [a] motion to dismiss a pleading that is insufficient as to substance." 52 Pa. Code § 5.101(a)(3).

II. ARGUMENT

A. Evidence Of Adverse Impact Is Not A Sufficient Basis Upon Which To Deny A Transfer Application.

Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). In a transfer proceeding, the applicant bears the burden to demonstrate that it possesses the technical and financial fitness to perform the proposed service. See 52 Pa. Code § 41.14(b); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

The Commission and Pennsylvania courts recognize two bases upon which a transfer application can be denied. First, the Commission can deny a transfer application where it finds that the applicant does not possess the technical and financial ability to provide the proposed service. 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Alternatively, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Here, the Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit authority,² or that Bennett has abandoned that authority.³

² Although not placed in issue by Protestant, Mail Line's fitness can hardly be challenged, as it will be owned and operated by Clifford and Barbara Kingsley, who have successfully owned and operated another certificated paratransit company, Tri County Transit Service, Inc. for many years. This fact is well known to Norristown's owners, who are related to Mrs. Kingsley. Furthermore, Norristown, Tri County and Bennett all are members of Suburban Transit Network, Inc. t/d/b/a Transnet, which is designated by the Pennsylvania Department of Transportation as the Senior Citizen Shared Ride Coordinator for Montgomery County, Pennsylvania, and is responsible for providing a system of coordinated paratransit services to Montgomery County residents.

³ Even if the Protest did aver that Bennett had abandoned the proposed service, such an averment would not withstand scrutiny. Abandonment requires proof that the carrier intended to abandon the service "together with

Rather, the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business. As demonstrated below, such evidence, standing alone, is insufficient to justify denial of a transfer application.

Section 41.14(a) of the Public Utility Code provides that an applicant seeking motor common carrier authority must show a public demand or need for the service. 52 Pa. Code § 41.14(a). In reality, this subsection addresses the standards applicable to a request for new operating authority. In a transfer proceeding, it has long been held that the applicant does not need to prove that there exists a public demand or need for the underlying service to be transferred; rather, it is presumed that the demand or need, having previously been found, continues to exist at the time of the transfer. South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). This presumption is called the "presumption of continuing necessity," and it applies where the acquiring carrier proposes to provide a service that does not differ from the service that had been provided by the transferring carrier. In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).⁴

In theory, the presumption of continuing necessity can be rebutted by a protestant to a transfer application. However, neither the Commission nor the Pennsylvania courts consider that a protestant has met its burden to rebut the presumption where, as here, the sole basis of the

external acts by which that intent [was] carried into effect." In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). Here, the record will show without a shadow of a doubt that pursuant to its paratransit authority, Bennett has provided, and continues to provide, in excess of 2,500 paratransit trips each month to senior citizens and other eligible riders. Once again, the suggestion that Bennett's rights have been abandoned and therefore cannot be transferred is ludicrous.

protest is merely that approval of the transfer application will adversely impact the protestant's business. In fact, the Commission has stated precisely the opposite; namely, that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

Moreover, Pennsylvania courts that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the carrier is not currently providing the service. For example, in In re: Byerly, the protestant argued that there was no public demand or need for the proposed service because the transferor had never "transported any building supplies, building materials [sic], sand or gravel and that since 1965 he received no requests to nor did he in fact transport any coal." In re: Byerly, 270 A.2d 186, 189 (Pa. 1970). Rejecting this argument, the Pennsylvania Supreme Court stated that "[t]he fact that a carrier has not transported the certificated product and that fact that he has not been requested to do so does not rebut the presumption of continuing necessity." Id. The Commission reached the similar conclusion several years later in In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Here, after reaffirming that the presumption of continuing necessity applies in transfer proceedings, the Commission concluded that "mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]." Id.

⁴ Main Line seeks to provide services identical to those provided by Bennett.

The Commission's finding that adverse impact is not a sufficient basis upon which to deny a transfer application, coupled with the Pennsylvania Supreme Court's conclusion that the frequency of services provided does not accurately reflect the "public need" for the service, reflects that evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

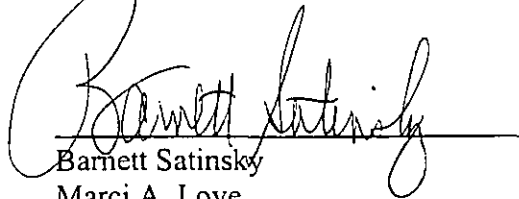
B. In The Alternative, Norristown Should Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.

As discussed in Section II(A) above, the Commission has found that where the presumption of continuing necessity is applicable, evidence of adverse impact, i.e. that Norristown's business will suffer if the Transfer Application is approved, is irrelevant in the context of a transfer proceeding. Accordingly, if the Motion to Dismiss is not granted at this time, Norristown nevertheless should be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

III. CONCLUSION

For all of the foregoing reasons, Main Line respectfully requests that the Commission dismiss Norristown's Protest with prejudice or, in the alternative, preclude Norristown from introducing evidence of adverse impact at a hearing with respect to the Protest.

Respectfully submitted,



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Attorneys for Applicant

Date: December 8, 1999

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
: :
TRANSIT SERVICE, INC. :

ORDER

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that the Protest is DISMISSED with prejudice.

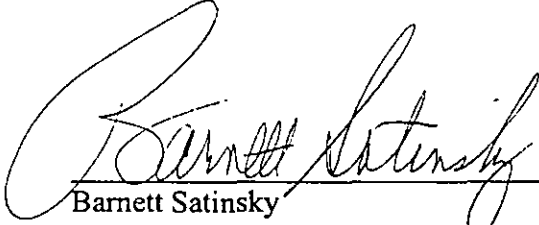
, J.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail, postage prepaid, true copies of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company, or in the Alternative, Motion in Limine, together with Brief and proposed forms of Order in connection therewith, upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg
Law Offices of John J. Gallagher, P.C.
Suite 1100
1760 Market Street
Philadelphia, PA 19103
Attorney for Protestant
Norristown Transportation Company

Dated this 8th day of December, 1999


Barnett Satinsky
Fox, Rothschild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103
Attorney for Applicant

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Main Line	:	Docket No.
Transit Service, Inc.	:	A-00116172

Initial Decision Granting Motion To Dismiss Protest

Before
Wayne L. Weismandel
Administrative Law Judge

History of the Proceeding

On August 5, 1999, Main Line Transit Service, Inc. (applicant) filed an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (Application) with the Pennsylvania Public Utility Commission (Commission), Docket Number A-00116172.¹ The Application sought the approval of the transfer and to exercise the right as a common carrier described at Docket Number A-00089018, Folder No. 2, Amendment D, issued to Bennett Taxi Service, Inc., for transportation of persons in paratransit service between points in the Townships of Upper Merion, Lower Merion and the Borough of Narberth, Montgomery County, and the Townships of Radnor, Haverford, Marple and Newtown, Delaware County, subject to certain restrictions. The Application listed Thomas M. Keenan, Esq., 376 East Main Street, P.O. Box 26460, Collegeville, PA 19426, telephone number (610) 489-6170, as "Applicant's attorney (for this application)".

Notice of the Application was published in the Pennsylvania Bulletin on September 25, 1999, with protests due on or before October 18, 1999.

On October 18, 1999, Norristown Transportation Company (protestant) filed a Protest (Protest) against the granting of the Application. The Certificate of Service attached to the Protest certified that a copy was served upon the applicant only on October 14, 1999, by first class mail.

By Memorandum dated November 8, 1999, the Commission's Bureau of Transportation and Safety (T&S) advised the Office of Administrative Law Judge (OALJ) that the case should be set for hearing.

By Interim Order Setting Settlement Conference (Interim Order) dated November 16, 1999, Chief Administrative Law Judge Robert A. Christianson directed the applicant and protestant to "attempt to settle this matter, considering, in particular, the issues relating to transfer-of-authority proceedings." The Interim Order further directed the participants to confer on or before December 13, 1999, and directed the applicant to file a report with the OALJ Mediation Coordinator within ten days following the conference. The Interim Order was served on the applicant, its attorney of record Thomas M. Keenan, Esq., and protestant's attorney of record Larisa Tenberg, Esq.

On December 8, 1999, Barnett Satinsky, Esq. and Marci A. Love, Esq., Fox, Rothschild, O'Brien & Frankel, LLP, filed and served a Notice Of Appearance "as co-counsel on behalf of the Applicant." Also on December 8, 1999, applicant filed and served a Motion To Dismiss The Protest Or, In The Alternative, Motion In

¹ Though filed on August 5, 1999, the Application was not docketed

Limine (Motion), accompanied by a Brief In Support, requesting that the Protest be dismissed as insufficient as to substance, or in the alternative, that the protestant should be precluded from introducing evidence of adverse impact in support of its Protest at any hearing in the case.²

On December 20, 1999, protestant filed and served a Reply (Reply), accompanied by a Brief In Support, to applicant's Motion. Protestant's Reply was served on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq., on behalf of the applicant. The Reply avers that "the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not." Additionally, in its Brief In Support, protestant argues that applicant's Motion should be denied because it was untimely filed.

On December 28, 1999, applicant's Motion was assigned to me for ruling. By letter dated December 28, 1999, the participants were notified by Chief Administrative Law Judge Christianson of my assignment.

Applicant's Motion is procedurally ready to be ruled upon.

Findings Of Fact

1. On August 5, 1999, applicant filed an Application for transfer of common carrier rights with the Commission, Docket Number A-00116172.

until August 31, 1999.

² The filing and serving of applicant's Motion was accepted as the report to be filed with the OALJ Mediation Coordinator in accordance with the Interim Order.

2. The Application listed Thomas M. Keenan, Esq., 376 East Main Street, P.O. Box 26460, Collegeville, PA 19426, telephone number (610) 489-6170, as "Applicant's attorney (for this application)".

3. On October 18, 1999, protestant filed a Protest against the granting of the Application.

4. The Certificate Of Service attached to the Protest certified that a copy was served upon the applicant only on October 14, 1999, by first class mail.

5. The Protest raises only one ground: that the granting of the Application "will have an adverse impact on [protestant] in that [protestant] and applicant will be in direct competition with one another for the transportation of passengers."

6. On December 8, 1999, Barnett Satinsky, Esq. and Marci A. Love, Esq., Fox, Rothschild, O'Brien & Frankel, LLP, filed and served a Notice Of Appearance "as co-counsel on behalf of the Applicant."

7. Also on December 8, 1999, applicant filed and served a Motion requesting that the Protest be dismissed as insufficient as to substance, or in the alternative, that the protestant be precluded from introducing evidence of adverse impact in support of its Protest at any hearing in the case.

8. On December 20, 1999, protestant filed and served a Reply to applicant's Motion.

9. Protestant's Reply was served on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq., on behalf of the applicant.

Discussion

Commission preliminary motion practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A motion to dismiss a protest, as provided in 52 Pa.Code §5.101, is available to an applicant in motor transportation proceedings. 52 Pa.Code §3.381(c)(1)(i)(C).

52 Pa.Code §5.101(a)(3) provides:

A preliminary motion is available to participants. The preliminary motion shall state specifically the grounds relied upon, the standing of the party and shall be limited to the following:

A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party.

What 52 Pa.Code §5.101(a)(3) refers to as "a motion to dismiss a pleading that is insufficient as to substance" is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

It is well established that for purposes of determining preliminary objections in the form of a demurrer, the Court must accept as true all well pleaded facts and reasonable inferences which may be deduced

therefrom, but not conclusions of law. *Moyer v. Davis*, 67 Pa. Commonwealth Ct. 251, 446 A.2d 1355 (1982), *aff'd*, 501 Pa. 192, 460 A.2d 754 (1983). It is also true that a demurrer may not be sustained unless the face of the complaint shows that the law will not permit recovery, and that any doubt should be resolved in favor of overruling the demurrer. *Association of Pennsylvania State Colleges and University Faculties v. Commonwealth*, 44 Pa. Commonwealth Ct. 193, 403 A.2d 1031 (1979). And, of course, in ruling on a demurrer a court may not consider facts not disclosed in the record. *Wells v. Pittsburgh Board of Public Education*, 31 Pa. Commonwealth Ct. 1, 374 A.2d 1009 (1977).

Insurance Adjustment Bureau v. Insurance Commissioner, 86 Pa. Commw. 491; _____, 485 A.2d 858; 859-860 (1984).

Applying these principles to the case at hand, respondent's Motion will be granted.

The Protest filed in this case raises only one ground; that the granting of the Application "will have an adverse impact on [protestant] in that [protestant] and applicant will be in direct competition with one another for the transportation of passengers."

Accepting that this averment is true, as one must for purposes of ruling on applicant's Motion, the law will not permit this to serve as the basis for a valid protest in this transfer of motor common carrier authority case.

In *Re L. Joseph Williams t/d/b/a Executive Limousine Service*, 78 PA PUC 41(1993), Administrative Law Judge Larry Gesoff stated the law as follows:

Although an acquiring applicant is technically a "new carrier", the operating authority sought to be transferred here is not new authority. The Commission has

previously determined the issue of public necessity for the rights to be transferred.

In *App. of H. E. Shoup*, 45 PA PUC 371, 373 (1971), the commission examined the issue of competition in the context of a transfer proceeding, and stated:

The initial contention of Womeldorf, Inc., is that the protestant will be injured by competition if the application is approved. The Commission has considered the matter of competition to be irrelevant in a transfer proceeding. The Commission has also held that adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application. *Edward R. Simpson, supra.*; and *App. of McNaughton Bros., Inc., supra.*
78 PA PUC @ 53.³

See, also, Re Erie Transportation Services, Inc., 72 PA PUC 113(1990).

Protestant's sole basis raised in the Protest for denying the instant Application being "irrelevant", applicant's Motion must be granted and the Protest dismissed.

The Commission is granted discretion to determine if a hearing is required. 66 Pa.C.S. §703(b). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law only the Commission need not hold a hearing. Lehigh Valley Power Comm. v. PA Public Utility Comm'n, 128 Pa.Commw. 259, 563 A.2d 548(1989), Edan Transportation Corp. v. PA Public Utility Comm'n, 154 Pa.Commw. 21, 623 A.2d 6(1993). This case does not involve disputed questions of fact. The question presented is one of law only. A hearing in this case is not necessary and would be a fruitless exercise.

³ Administrative Law Judge Gesoff's Initial Decision became a final Commission decision by operation of law, 66 Pa.C.S. §332(h).

The sole Protest filed in this case being dismissed herein, the Application will be referred for disposition in accordance with the provisions of 52 Pa.Code §3.381(c)(1)(iii)(A).

Given the procedural history of this case, a few additional points should be covered.

A protest is a pleading. 52 Pa.Code §§3.381(c)(1)(i)(C), 5.1(a)(1), 5.51 - 5.54. It is hornbook law that the issues in a case are raised by the pleadings alone. *Cf.*, 52 Pa.Code §§3.381(c)(1)(i)(A)(IV), 5.52(a). The only issue raised in the instant Protest is that of the potentially adverse impact of competition on protestant. Statements such as “the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not”, confuse the evidence concept of relevance with proper procedural requirements to raise issues in a particular case. Relevant issues that are not properly pled are waived.

The Commission’s Regulations provide that a protest is to be served by the protestant on “the applicant and the applicant’s attorney, if any”. 52 Pa.Code §§3.381(c)(1)(i)(A), 5.52(b). Thomas M. Keenan, Esq., is shown as “Applicant’s attorney (for this application)” on the Application. This constitutes Mr. Keenan’s entry of appearance on behalf of applicant in this case. 52 Pa.Code §§1.24(b), 1.55(a). However, the Certificate Of Service attached to the Protest certified that a copy was served upon the applicant only. While timely filed, the service of the Protest in this case was clearly deficient.

The lack of service of the Protest on applicant’s attorney is of some importance here in light of protestant’s averment that applicant’s Motion was not timely filed. This averment is contained in protestant’s Brief In Support filed with its

Reply. It should be remembered that issues are not properly raised in a Brief, but rather, in a pleading.

Applicant's Motion should have been filed on or before the twenty-third day after service of the Protest. 52 Pa. Code §§5.101(b), 5.61(a), 3.381(c)(1)(i)(C), 1.56(a)(1), 1.56(b). That is, on or before November 8, 1999.⁴ In fact, applicant's Motion was filed and served on December 8, 1999, apparently a month late. As set forth above, however, protestant's service of its Protest was defective, and it does not stretch credulity to conclude that the lack of service on applicant's counsel contributed to the delay in preparing and filing applicant's Motion. Computations of time periods from the "date of service" presume that service was properly made. Protestant should not be heard to complain about a delay that it, at least in part, caused. Further, protestant filed and served a Reply⁵ that was received and considered before any action was taken on applicant's Motion. In the vernacular, "no harm, no foul."

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the participants in this case.

⁴ This computation uses the mailing date of October 14, 1999 set forth in the Certificate Of Service attached to the Protest, and also takes into account that the twenty-third day would have been Saturday, November 6, 1999. See, 52 Pa.Code §1.12(a).

⁵ It is noted that the Certificate Of Service attached to protestant's Reply certifies that service was made on both Barnett Satinsky, Esq. and Thomas M. Keenan, Esq..

2. Commission preliminary motion practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections.
3. A motion to dismiss a protest, as provided in 52 Pa.Code §5.101, is available to an applicant in motor transportation proceedings.
4. A protest is a pleading.
5. The issues in a case are raised by the pleadings alone.
6. Relevant issues that are not properly pled are waived.
7. The only issue raised in the instant Protest is that of the potentially adverse impact of competition on protestant.
8. A protest is to be served by the protestant on the applicant and the applicant's attorney, if any.
9. An attorney whose name and address appear in a representative capacity on an Application filed with the Commission shall be considered to have entered an appearance.
10. While timely filed, the service of the Protest in this case was clearly deficient.
11. What 52 Pa.Code §5.101(a)(3) refers to as "a motion to dismiss a pleading that is insufficient as to substance" is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

12. In determining preliminary objections in the form of a demurrer, the Court must accept as true all well pleaded facts and reasonable inferences which may be deduced therefrom, but not conclusions of law. It is also true that a demurrer may not be sustained unless the face of the complaint shows that the law will not permit recovery, and that any doubt should be resolved in favor of overruling the demurrer. And, in ruling on a demurrer, a court may not consider facts not disclosed in the record.

13. In a transfer of motor common carrier authority case, although an acquiring applicant is technically a "new carrier", the operating authority sought to be transferred is not new authority. The Commission has previously determined the issue of public necessity for the rights to be transferred.

14. The Commission has considered the matter of competition to be irrelevant in a transfer proceeding.

15. The Commission has also held that adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application.

16. The Commission is granted discretion to determine if a hearing is required.

17. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law only the Commission need not hold a hearing.

18. This case does not involve disputed questions of fact. The question presented is one of law only. A hearing in this case is not necessary and would be a fruitless exercise.

19. Protestant's Protest raises no claims for which relief can be granted.

20. The face of the Protest shows that the law will not permit recovery.

21. When the sole Protest filed in a case is dismissed, the Application will be referred for disposition in accordance with the provisions of 52 Pa.Code §3.381(c)(1)(iii)(A).

Order

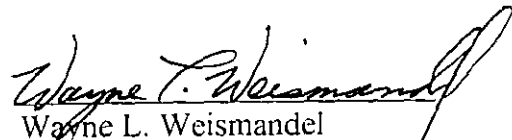
THEREFORE,

IT IS ORDERED:

1. That the Motion To Dismiss the Protest of Norristown Transportation Company, filed in the above-captioned case by Main Line Transit Service, Inc., is granted and the Protest is dismissed.

2. That the Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights filed on August 5, 1999, by Main Line Transit Service, Inc., Docket Number A-00116172, now being unopposed, is referred for disposition in accordance with the provisions of 52 Pa.Code §3.381(c)(1)(iii)(A).

Date: JANUARY 4, 2000


Wayne L. Weisman
Administrative Law Judge

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADMINISTRATIVE LAW JUDGE WAYNE L. WEISMANDEL

IN RE: Application of : PUC DOCKET NO.
MAIN LINE TRANSIT SERVICE, INC. : A-00116172

EXCEPTIONS TO THE INITIAL DECISION DISMISSING PROTEST OF
NORRISTOWN TRANSPORTATION COMPANY

AND NOW, comes Protestant Norristown Transportation Company, by and through its undersigned counsel, and makes the following Exceptions to the Initial Decision Dismissing Protest of Norristown Transportation Company, and in support thereof avers the following:

1. By notice published in the Pennsylvania Bulletin on September 25, 1999, Main Line Transit Service, Inc. (hereinafter "Applicant") sought the approval of transfer and exercise of common carrier or contract rights under the transfer of the paratransit rights under the certificate issued at A-00089018, F.4. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A".

2. On October 14, 1999, Norristown Transportation Company (hereinafter "Protestant") filed a protest to the Transfer Application. A true and correct copy of the protest is attached hereto as Exhibit "B".

3. On November 8, 1999, the applicant filed a Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. A true and correct copy of the Applicant's Motion to Dismiss The Protest of Norristown

Transportation Company Or. In The Alternative. Motion In Limine is attached as Exhibit "C" hereto.

4. On December 20, 1999. Protestant filed a Reply to Applicant's Motion to Dismiss. A true and correct copy of the Protestant Norristown Transportation Company's Reply to Applicant's Motion To Dismiss The Protest of Norristown Transportation Company Or. In The Alternative. Motion In Limine is attached as Exhibit "D" hereto.

5. On January 20, 2000. Applicant's Motion To Dismiss was granted. A true and correct copy of ALJ Wayne L. Weisman del's decision is attached as Exhibit "E" hereto.

6. In granting Applicant's motion to dismiss. Judge Weisman del concluded that Norristown Transportation Company's Protest shall be dismissed because the Protest filed raised only one ground; that the granting of the Application "will have an adverse impact on [protestant] in that [protestant] and applicant will be in direct competition with one another for the transportation of passengers." See Exhibit A, p. 6. Moreover, Judge Weisman del concluded that Applicant's Motion was not untimely filed because of the lack of service of the Protest on Applicant's attorney. See Exhibit A, pp. 9-12.

7. Judge Weisman del erroneously concluded that Applicant's Motion was not untimely filed.

8. Applicant's Motion should have been filed on or before November 8, 1999. 52 Pa. Code §§5.101(b), 5.61(a), 3.381(c)(1)(i)(C), 1.56(a)(1), 1.56(b).

9. In fact, Applicant's Motion was filed and served on December 8, 1999, apparently one month late.

10. Judge Weisman's conclusion that Protestant's service of its Protest was defective because of lack of service on Applicant's attorney is erroneous.

11. Protestant's knowledge about Applicant's transfer application came from the notice published in *Pennsylvania Bulletin*, Vol. 29, No. 39, on September 25, 1999.

12. The notice did not state Thomas M. Keenan, Esq. as Applicant's attorney. In fact, the notice did not list any attorney at all. See Exhibit A.

13. The fact that Thomas M. Keenan, Esq. was shown as Applicant's attorney on the Application is irrelevant since the notice did not publish his name and the Protestant was not in possession of the Application.

14. As such, Protestant complied with 52 Pa. Code §§3.381(C)(1)(I)(A), 5.52(b), by serving the protest on the applicant. The Certificate Of Service attached to the Protest certified that a copy was served upon the applicant.

15. Therefore, the protest was timely filed and properly served.

16. Since the protest was properly served, Applicant's Motion was untimely filed, one month late, and thus should have been dismissed as untimely filed. 52 Pa. Code §3.381(C)(3).

17. Because Applicant's Motion was untimely filed and, in accordance with the rules of Public Utility Commission, should have been dismissed, Judge Weisman's discussion of the grounds raised in Protest becomes irrelevant.

18. Applicant bears the burden to demonstrate that it possesses fitness whether or not the issue of fitness was raised in the protest. See 52 Pa. Code §41.14(b); RE O'Connor, 54 Pa.P.U.C. 547 (1980); In re: L. Joseph Williams t/d/b/a Executive

Limousine Serv., 78 Pa.P.U.C. 41 (1993); In re: Erie Transp. Servs., Inc., 72 Pa.P.U.C. 113 (1990).

19. The issue of fitness especially becomes important when Protestant's investigation revealed that Applicant's principle is operating illegally under the authority granted. Moreover, the investigation revealed that part of the authority has been abandoned.

20. Furthermore, where there is a proof of abandonment of the certificate of public convenience, the applicant is still required to prove necessity. Bverly v. Pa Public Utility Commission, 440 Pa. 521, 270 A.2d 186 (1970).

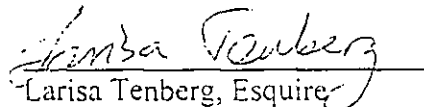
21. When the proof of necessity becomes applicable, the evidence of adverse impact becomes relevant. 52 Pa. Code §41.14(C).

22. Based on the foregoing, the motion was erroneously granted and the decision of ALJ Weismandel should be reversed.

Respectfully submitted,

LAW OFFICES OF JOHN J. GALLAGHER, P.C.

BY:



Larisa Tenberg, Esquire
Attorney for Protestant
Norristown Transportation Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2000, I mailed by first class mail, postage prepaid, a copy of the foregoing Exceptions To The Initial Decision Dismissing Protest Of Norristown Transportation Company via first class mail:

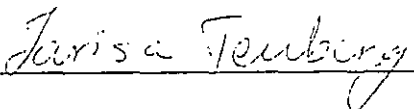
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Administrative Law Judge Wayne L. Weismandel
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P.O. Box 19426
Collegeville, PA 19426

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

An initial hearing on this matter will be held Thursday, October 29, 1999 at 10 a.m. in an available hearing room, Ground Floor, North Office Building, North Street and Commonwealth Avenue, Harrisburg, PA when and where all persons in interest may appear and be heard, if they so desire.

JAMES J. MCNULTY,
Secretary

PH 31 Dec 26 1999-1649 Filed for public inspection September 24, 1999, 9:00 a.m.

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before October 18, 1999, as set forth at 52 Pa. Code § 3.351 relating to applications for transportation of property and persons). The protests shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.

A-00116178. East Coast Van Service, Inc. (6321 Mansfield Avenue, Suite 300, Philadelphia, PA 19150), a corporation of the Commonwealth of Pennsylvania—persons, in paratransit service between points in the city and county of Philadelphia, and the counties of Chester, Bucks, Delaware and Montgomery.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.

— A-00116172. Main Line Transit Service, Inc. (303 East Church Road, King of Prussia, Montgomery County, PA 19405), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, (1) for Morgan's Run Corporation, from the Radnor Train Station and the Radnor P & W Train Station, in the township of Radnor, Delaware County, to the Radnor Corporate Center in said township, and vice versa; subject to the following conditions: That all service shall be provided in vehicles having a seating capacity of not less than 15 persons, excluding the driver; and that transportation shall be for the account of one party for which the charge is based upon the transportation of a group and not upon the number of persons transported and for which payment is made by a group, organization or company and not by the passengers as individuals; and (2) between points in the townships of Upper Merion, Lower Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Havertford, Marple and Newtown, Delaware County; subject to the following conditions: That service shall be provided in vehicles without the use of taximeters or dome lights; that service is limited to the

transportation in a vehicle not limited to individual use, for which reservations are made not later than the previous calendar day; and that service may be performed in vehicles having a seating capacity of 25 passengers or less, excluding the driver; which is to be a transfer of the paratransit rights authorized Bennett Taxi Service, Inc. under the certificate issued at A-00103823, F. 4, subject to the same limitations and conditions.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under each application.

A-00116130. F. 2. Pittsburgh Transportation Company, Inc. (5931 Elewirth Avenue, Pittsburgh, Allegheny County, PA 152065), a corporation of the Commonwealth of Pennsylvania—additional right—persons upon call or demand, (1) in the borough of Brentwood, and the townships of Bethel, Upper St. Clair and Snowden, Allegheny County; (2) in the township of Baldwin, the borough of Whitehall, and that portion of the township of Jefferson, all in Allegheny County; bounded and described as follows: Beginning at a point common to Jefferson Township, Snowden Township and Baldwin Township, thence from said point of beginning along the line dividing Snowden Township from Jefferson Township to Highway Route 02085; thence along Highway Route 02085 in a northeasterly direction to the Mowery, Gill Hall and Cochran Mill Road; thence along said road to Highway Route 072; thence along Highway Route 072 and the Coal Valley Road to Highway Route 51; thence in a northwesterly direction along Highway Route 51 to Highway Route 02113, thence along Highway Route 02113 to the line dividing Jefferson Township for West Mifflin Borough; thence along said township line to a point common to Jefferson Township, Baldwin Township and West Mifflin Borough; thence along the Jefferson Township-Baldwin Township line to the place of beginning; including the borough of Pleasant Hills; (3) in that portion of the borough of West Mifflin, Allegheny County; bounded and described as follows: Beginning at a point at the southwesterly corner of West Mifflin Borough, at a point common to Jefferson Borough and Baldwin Borough; thence along a line dividing West Mifflin and Baldwin Borough, to a point on a line dividing property now or formerly of Terminal Coal Company and property of Charles Davis; thence along said dividing line and along a line dividing property now or formerly of Willock Land Company from property of Carnegie Illinois Steel Corporation, in a southeasterly direction to State Highway Route 535 and Monongahela, Southern Railroad, also known as the Union Railroad; thence in a northeasterly direction along the line of the Union Railroad and along the northerly line of the Municipal Airport property, to Buttermilk Hollow Road; thence along Buttermilk Hollow Road in a southerly direction to Lebanon Church Road; thence in a southwesterly direction along Lebanon Church Road to the Jefferson Borough line, thence along the Jefferson Borough line in a northerly direction to the point at place of beginning; (4) in the borough of Castle Shannon; (5) in the borough of Finleyville, Washington County; and within a radius of 5 miles thereof; and (6) in the city of Pittsburgh, Allegheny County; which is to be a transfer of the call or demand rights of Mayflower Contract Services, Inc., authorized under the certificate issued at A-00103823, F. 1, subject to the same limitations and conditions. Attorney: Ray F. Middleman.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A.00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY

TO THE APPLICATION OF

MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).

2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.

3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.

4. Applicant is seeking the right to transport persons in paratransit service between points in, counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.

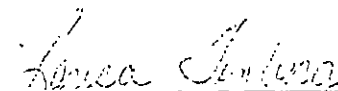
5. If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

7. Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Main Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE
Attorney for Protestants

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

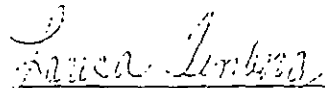
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARISA TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg
LARISA TENBERG, ESQUIRE

DATE: 10/14/99

REGISTRATION NO. 10-10011-20
HOLLER 2

PARADISE - PA. P.U.C. NO. 6
LANDS
PARADISE - PA. P.U.C. NO. 5

MORRISTOWN YELLOW CAB CO., INC.

RATES AND RULES
GOVERNING THE
TRANSPORTATION OF
PERSONS

(as designated herein)

ISSUED: August 21, 1990

EFFECTIVE: September 21, 1990

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Morristown, PA 19401
tel: 277-1234

LIST OF CHANGES MADE BY THIS TARIFF

Rules and Regulations Rule 2 - Days and Hours of Operation is changed from 7:00 A.M. to 10:00 P.M. TO READ 6:00 A.M. TO 6:00 P.M.

OPERATING AUTHORITY

To transport, as a common carrier, persons in paratransit service between points in the borough of Norristown, Montgomery County, and within an airline distance of five (5) statute miles of the limits of said borough, excluding the boroughs of Conshohocken and West Conshohocken, and the township of Whitmarsh, all in Montgomery County.

Subject to the following conditions:

- a. That the service herein authorized is limited to transportation in vehicles having a seating capacity not to exceed fifteen (15) persons including the driver.
- b. That the service herein authorized is limited to transportation in a vehicle not reserved for individual use, for which advanced reservations are made not later than the previous calendar day.
- c. That no right, power or privilege is granted to provide scheduled route service as defined in 52 Pa Code §29.14.
- d. That no right, power or privilege is granted to transport persons in group and party service as defined in 52 Pa Code §29.15.
- e. That no right, power or privilege is granted to operate vehicles equipped with taximeters or dome lights.

SHARED RIDE RATES PER PERSON

1. Zone Rates:

Six zones are established and are color coded. (See Map) Rates range from \$3.50 to \$17.00 depending on the number of zones travelled (See Page 5 for rates within each zone and between zones).

2. Days and Hours of Operation: (C)

Service is available every day, holidays included, from 6:00 A.M. to 6:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous day of when service is to be rendered.

4. Waiting Time:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 15% of the shared ride rate (rounded upward to the nearest \$.05); provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate under the provisions of Section 704, of Act 36 of 1991 (the Lottery Fund Preservation Act)

6. Contract Services:

Contract services provided will be for a term of not less than 30 days for prequalified persons under a federal, state, county or municipal governmental agency contract. Rates for the services will be specified in the respective contracts, copies of which, including any amendments thereto, are to be filed with the Commission as executed, to become effective on one day's notice.

(C) Indicates change or addition



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3105, HARRISBURG, PA 17105-3105

REPORTS DIVISION

JANUARY 11, 1997

A-10136633, P. 4

RAYMOND A. WATKINS JR. ESQUIRE
 SUITE 3
 726 FIFTEENTH TOWN ROAD
 WILLOW BRUSH PA 19128-1191

APPLICATION OF NORRISTOWN TRANSPORTATION
 A CORPORATION OF THE COMMONWEALTH OF PENNSYLVANIA

Enclosed is the compliance order issued by the Commission in this proceeding.

The Certificate of Public Convenience evidencing the Commission's approval of the right to operate will not be issued until the applicant has prepared and filed a tariff, instructions for which are enclosed.

No motor carrier shall operate or engage in any transportation until compliance with the above requirement and a certificate of public convenience has been issued authorizing actual operations. Motor carriers operating without complying with the above requirement will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with the above requirement within sixty (60) days of the date of this letter. Failure to comply within sixty (60) day period will cause the Commission to rescind the action of January 16, 1997, and dismiss the application without further proceeding.

Very truly yours,

Tom G. Alford, Secretary

smh
 encs.
 cert.mall
 receipt requested
 Tariff Contact: 717-737-3343
 NORRISTOWN TRANSPORTATION CO
 41 BURNSIDE AVENUE
 NORRISTOWN PA 19101

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 16, 1997

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice-Chairman
John Hanger
David W. Roika
Robert K. Bloom

Application of Norristown Transportation Company, a corporation of the Commonwealth of Pennsylvania, for the additional right, to transport as a common carrier by motor vehicle, persons in paratransit service, between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough and the township of Whittemarsh, all in Montgomery County.

A-00106639
P. 4

Raymond A. Thistle, Jr. for the applicant.
Thomas, Thomas, Armstrong & Niesen by Patricia Armstrong
for protestant, Krapf's Coaches, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 22, 1996. Public notice of the application was given in the Pennsylvania Bulletin of April 27, 1996. A single protest was received by the above-mentioned carrier. The now unopposed application is certified to the Commission for its decision without oral hearing. The record consists of verified statements entered by the applicant and six supporting parties.

Nicholas Chermela, general manager of Norristown Transportation Company (applicant or Norristown Trans) is authorized to make this statement on behalf of the applicant. Chermela has been employed by applicant for twenty (20) years and is familiar with all phases of applicant's operations. The sole shareholder of applicant is Frank Smith. Frank Smith owns 100% of the common capital stock of applicant and also owns 100% of the common capital stock of Norristown Yellow Cab Co., Inc. at

Danielle Ehrhardt, Assistant Manager of Manor Care Health Services (supporting employer of Manor Care) is authorized by Brenda Nelson, activities director, to make this statement on behalf of the supporting witness. The supporting party is a health care provider and nursing home seeking paratransit transportation to meet its needs to serve its residents, some of whom are handicapped. It is anticipated that the supporting party will use the applicant's service on a basis of at least once every two weeks with the number of persons each trip averaging four to five. The origin point for the transportation is Manor Care located at 600 West Valley Forge Road, Upper Merion Township, Montgomery County. The destination points are the Country Buffet located in East Norristown Township and Valley Forge Park located in Upper Merion Township, Montgomery County, and return.

Sally Schmidt is a registered nurse and the primary nurse for the care of Judge Frederick B. Smillie residing at 1630 Sandyhill Road, Norristown, Montgomery County. Nurse Schmidt is in charge of arranging for the outings of the judge and, by reason of her duties and authority, is authorized to make this statement in support of the application. The judge requires transportation at least once every week and has used paratransit service for the past five years. The origin would be his residence as noted above and destination points of these trips are to the doctors at Montgomery County Hospital, Norristown, Plymouth Meeting Mall, Plymouth Township and King of Prussia Plaza, Upper Merion Township, all in Montgomery County, and return.

Patricia Moir, executive director of Suburban Transit Network, Inc. (supporting party or Trans Net) located at 960 Harvest Drive, Suite 100, Whitpain Township, Montgomery County, is authorized to present this verified statement in support of the application. The primary function of Trans Net is a health care provider of transportation services; however, it does coordinate corporate transportation service as well. Trans Net is the PennDOT coordinator for Montgomery County and is also a Pa. P.U.C.-licensed passenger broker that also coordinates the transportation of persons in paratransit service in Montgomery County. It is Trans Net's intent to utilize applicant's paratransit service within the scope of the territory sought as amended, for approximately twenty-one thousand (21,000) trips with return transportation required, per month, each month of the year. The supporting party has an existing and continuous need for paratransit service.

The following is a list of origin points, almost every trip is on a return basis, destination points, the type of facility, medical or corporate or individual involved. The listing is a sampling of past, present and future paratransit needs of Trans Net. Support is for transportation between points

DISCUSSION AND FINDINGS

Norristown Transportation Company is a common carrier currently certificated by this Commission to transport persons upon call or demand, parcels and packages, blood and blood products and medicine in taxicabs. Norristown seeks the additional right to transport persons in paratransit service between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough, and the township of Whittemarsh, all in Montgomery County. The application was opposed by a single carrier which withdrew upon restrictive amendment excluding the right to provide transportation to, from or between points in Chester County.

The territory encompassed within an airline distance of five (5) statute miles of the borough of Norristown includes the following boroughs and townships within Montgomery County: the boroughs of West Conshohocken, Conshohocken and Bridgeport and the townships of Whittemarsh, Norriton, Plymouth, Worcester, Lower Providence, West Norriton, Upper Merion, Whitpain and Lower Merion.

Falling within five statute miles of the limits of Norristown are fringe areas of other townships in Montgomery County. Also included within five statute miles of the borough of Norristown is a small portion of Chester County. The application has been amended to exclude transportation to, from and between points in Chester County.

The area of application as amended has been supported by four (4) individuals, one (1) nursing care facility and one (1) Montgomery County coordinator that proposes to tender applicant approximately twenty-one (21,000) paratransit trips on a return basis. We find that the application has been amply supported by the parties.

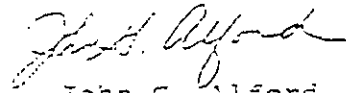
We find that:

1. Applicant currently operates pursuant to common carrier certificates issued by this Commission in 1966.
2. The application was opposed and the protest was withdrawn upon restrictive amendment.
3. Six supporting parties have demonstrated a need for the service as amended.
4. The applicant has the necessary equipment, experience and fitness necessary to render the amended service.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above-determined.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 16, 1997

ORDER ENTERED: JAN 20 1997

Certificate No. A.CC100317
Folder 2

Paratransit - Pa. P.U.C. No. 4
Cancels
Paratransit - Pa. P.U.C. No. 3

CONSHOHOCKEN YELLOW CAB CO.

OFFICIALLY FILED TARIFF

RATES AND RULES
GOVERNING THE
TRANSPORTATION OF

(As Designated Herein)

ISSUED: January 29, 1987

EFFECTIVE: February 28, 1987

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Morristown, Pa. 19401
Phone: (215) 277-1234

RECEIVED
PENNA. PUBLIC UTILITY COMM.
JAN 29 1987
Bureau of Transportation
Film and Document Section

LIST OF CHANGES MADE BY THIS TARIFF.

Shared ride grid rates are discontinued and zone rates are established.

OPERATING AUTHORITY - A. 100317, F. 2

To transport, as a common carrier, persons in paratransit service, between points in the boroughs of Conshohocken and West Conshohocken and the township of Whitemarsh, Montgomery County.

Subject to the following conditions:

1. That the service herein authorized is limited to transportation in vehicles having a seating capacity of not more than fifteen (15) persons, including the driver, without the use of dome lights and taximeters.
2. That the service herein authorized is limited to transportation in vehicles not reserved for individual use for which advance reservations are made not less than the previous calendar day.
3. That no right, power or privilege is granted to transport persons in group and party service, as defined in the Pennsylvania Code, Title 52, Chapter 29.13.
4. That no right, power or privilege is granted to provide scheduled route service as defined in the Pennsylvania Code, Title 52, Chapter 29.14.
5. That the applicant shall post in all vehicles, which the applicant operates under the authority held at A-00100317, F.1, notice of the availability of the herein authorized and the tariff for said service. Notice shall be posted in a conspicuous place in the interior of the vehicle.

WAY RATES

On calls up to and including eight (8) miles in any direction from the nearest garage or office and return:

14-passenger vans, per hour, per vehicle	\$ 22.00
9 to 13 passenger vans, per hour, per vehicle	20.00
Wheelchair vans, per hour, per vehicle	24.00

On calls beyond eight (8) miles in any direction from the nearest garage or office, and return:

14-passenger vans, per mile, per vehicle	\$ 1.15
9 to 13 passenger vans, per mile, per vehicle	1.00
Wheelchair vans, per mile, per vehicle	1.50

NOTES:

1. Mileage is calculated by the odometer of the vehicle used.
2. At least 24 hours advance notice must be given.
3. Rates are applicable seven (7) days a week, holidays included, between the hours of 7:00 A.M. and 10:00 P.M.
4. When hourly rates are charged there will be a one-hour minimum. Partial hours, after the first hour, will be calculated in quarter-hour intervals.
5. Contract services for a term not less than 30 days to provide the transportation requirements of pre-qualified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.
6. The total charges under this section are divisible by the number of persons carried per trip and are payable on a per person basis only.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates: (C)

Six zones are established and are color coded. (See Map) Rates range from \$4.00 to \$18.00 depending on the number of zones travelled (See Page for rates within each zone and between zones).

2. Days and Hours of Operation:

Service is available every day, holidays included, from 7:00 A.M. to 10:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous calendar day.

4. Waiting Time:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be \$.25 or 10% of the shared ride rate (rounded to the nearest \$.00 or \$.05), whichever is greater; provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate in the senior citizen program under Section 203, Act 101 (1980), as amended by Act 49 (1984), amended by Act 49 (1984).

6. Contract Services: (C)

Contract services for a term of not less than 30 days, to provide the transportation requirements of prequalified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.

(C) Indicates change or addition

SEE TAB "A"

EXHIBIT C

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

PROPOSED ORDER

AND NOW, this day of , 1999, upon consideration of
Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or,
In The Alternative, Motion In Limine and Protestant's Response thereto, it is hereby
ORDERED that said Motion is DENIED.

BY THE COURT:

J.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE
TRANSIT SERVICE, INC.

DOCKET NO.: A-00116172

PROTESTANT NORRISTOWN TRANSPORTATION
COMPANY'S REPLY TO APPLICANT MAIN LINE TRANSIT SERVICE
INC.'S MOTION TO DISMISS THE PROTEST OF NORRISTOWN
TRANSPORTATION COMPANY OR, IN THE ALTERNATIVE, MOTION IN
LIMINE

Protestant, Norristown Transportation Company ("Protestant"), by and through its undersigned counsel, hereby submits the Reply to the Applicant Main Line Transit Service, Inc.'s ("Applicant") Motion to Dismiss the Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. In support thereof, Protestant avers the following:

1. Admitted.
2. Admitted.
3. Denied. The Protest is in writing and therefore speaks for itself.
4. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
5. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
6. Denied. The issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its

protest or not. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

7. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself. Furthermore, the presumption of continuing necessity is rebuttable.

8. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

9. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

10. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required.

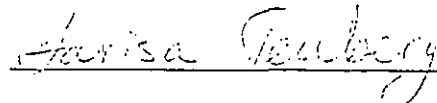
11. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

12. Denied. The protest is in writing and therefore speaks for itself. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not. Furthermore, Protestant intends to present evidence of lack of fitness and abandonment.

13. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied.

Respectfully submitted.



BY: LARISA TENBERG, ESQUIRE
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116173
TRANSIT SERVICE, INC. :

BRIEF OF PROTESTANT NORRISTOWN TRANSPORTATION COMPANY
IN SUPPORT OF ITS REPLY TO MAIN LINE TRANSIT SERVICE, INC.'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION IN LIMINE

Protestant, by and through its undersigned counsel, hereby submits the following brief in support of its Reply to Applicant's Motion to Dismiss the Protest of Norristown Transportation Company Or. In The Alternative, Motion In Limine.

BACKGROUND

By notice published in the Pennsylvania Bulletin on September 25, 1999, Applicant sought the approval of transfer and exercise of common carrier or contract rights under the transfer of the paratransit rights under the certificate issued at A-00089018, F.4. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A".

On or about October 14, 1999, Protestant filed a protest to the Transfer Application. A true and correct copy of the protest is attached hereto as Exhibit "B".

On or about November 8, 1999, the applicant filed a Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine. A true and correct copy of the Applicant's Motion to Dismiss The Protest of Norristown

Transportation Company Or. In The Alternative, Motion In Limine is attached as Exhibit "C" hereto.

ARGUMENT

I. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine should be denied because the motion was untimely filed.

Pennsylvania Public Utility Commission treats a protest as a pleading. As such, the applicant may file a motion to dismiss within 20 days after the closing date for the filing of protests. 52 Pa. Code § 3.381(c)(3).

Protestant filed its protest on October 14, 1999. A true and correct copy of the protest is attached hereto as Exhibit "B". The closing date for the filing of protests was October 18, 1999. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A". As such, the deadline for filing a motion to dismiss was November 8, 1999. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine was filed on or about December 8, 1999, i.e., one month after the deadline. A true and correct copy of the Applicant's Motion is attached hereto as Exhibit "C".

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine should be denied as untimely filed.

II. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or. In The Alternative, Motion In Limine should be denied because

Protestant Has Standing To Protest The Application Of Main Line Transit Service
Based On Applicants Lack Of Fitness.

Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). However, the applicant bears the burden to demonstrate that it possesses fitness to perform the proposed service. See 52 Pa. Code § 41.14(b). Fitness encompasses three concepts: the applicant must possess the technical and financial ability to provide the proposed service, and authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. RE O'Connor, 54 Pa.P.U.C. 547 (1980). The Commission can deny a transfer application where it finds that the applicant did not meet the above requirements. 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa.P.U.C. 41(1993). Also, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Based on the above, even though Main Line filed an Application for Approval of Transfer, Applicant still bears the burden to demonstrate that it possesses fitness, whether or not the issue of fitness was raised in the protest. Protestant's investigation revealed that applicant's principle is operating illegally under the authority granted. Moreover, the investigation revealed that part of the authority has been abandoned.

WHEREFORE, Applicant's Motion to Dismiss Or, In The Alternative, Motion In Limine shall be denied.

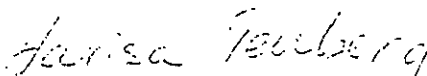
III. In The Alternative, Norristown Should Not Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.

In cases involving applications for transfer of motor carrier rights under a certificate of public convenience, the applicant need not prove necessity, but rather there is a presumption of continuing public need for the service authorized by the certificate. Byerly v. Pa. Public Utility Commission, 440 Pa. 521, 270 A.2d 186 (1970). However, this presumption is rebuttable. Where there is a proof of abandonment of the certificate of public convenience, the applicant is still required to prove necessity. Id. When the proof of continuing necessity becomes applicable, the evidence of adverse impact becomes relevant. 52 Pa. Code § 41.14 (c).

Based on Protestant's investigation, Applicant abandoned at least part of its authority. As such, evidence of adverse impact becomes relevant in the context of a transfer proceeding.

WHEREFORE, Protestant should not be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted.



BY: LARISA TENBERG, ESQUIRE
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172
TRANSIT SERVICE, INC. :

CERTIFICATE OF SERVICE

I, hereby certify that on this 20th day of December, 1999, I mailed by first class mail, postage prepaid, a copy of the Reply to the Applicant's Motion to Dismiss The Protest of Norristown Transportation Company Or. In The Alternative, Motion In Limine to:

Commonwealth of Pennsylvania
Pennsylvania Public Utility commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

Barnett Satinsky, Esquire
Fox, Rothchild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103

Thomas M. Keenan
Keenan, Ciccitto & Brant
376 East Main Street
P.O. Box 19426
Collegeville, PA 19426



LARISA TENBERG, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE.

APPLICATION OF

A.00118172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY

TO THE APPLICATION OF

MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).
2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.
3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.
4. Applicant is seeking the right to transport persons in paratransit service between points in counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.

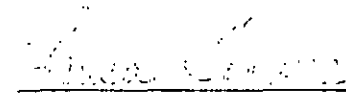
5. If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 62 P.S. Code § 3381.

7. Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Main Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE
Attorney for Protestiant

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

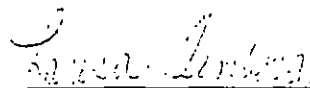
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.
303 East Church Road
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARISA TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg
LARISA TENBERG, ESQUIRE

DATE: 10/14/99

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

INTERNAL SECURITY - RACIAL MATTERS

FATES AND RULES
GOVERNING THE
DEPORTATION OF
PERSONS

100-100000-10000

ISSUED: August 21, 1996

EFFECTIVE: September 21, 1996

Prepared by: [Name] of the [Department]
At: [Address]
Washington, D. C. 20535
Date: 10/1/96

1987-1988

Rules and Regulations Rule 1 - Days and Hours of Operation is changed from 7:00 A.M. to 12:00 P.M. to 2:30 P.M. to 11:00 P.M.

PERMITTING AUTHORITY

To transport, as a common carrier, persons in paratroop service between points in the borough of Norrisburg, Montgomery County, and within an airline distance of five (5) statute miles of the limits of said borough, excluding the boroughs of Conshohocken and West Conshohocken, and the township of Whitmanah, all in Montgomery County.

Subject to the following conditions:

- a. That the service herein authorized is limited to transportation in vehicles having a seating capacity not to exceed fifteen (15) persons including the driver.
- b. That the service herein authorized is limited to transportation in a vehicle not reserved for individual use, for which advanced reservations are made not later than the previous calendar day.
- c. That no right, power or privilege is granted to provide scheduled route service as defined in 52 Pa Code §20.14.
- d. That no right, power or privilege is granted to transport persons in group and party service as defined in 52 Pa Code §20.15.
- e. That no right, power or privilege is granted to operate vehicles equipped with taximeters or time lights.

1. Fare Rates:

Fare rates are established and are color coded. See Map! Rates range from \$1.00 to \$17.00 depending on the number of zones travelled. See Page 2 for rates within each zone and between zones.

2. Days and Hours of Operation:

Service is available every day, holidays included, from 6:00 A.M. to 6:00 P.M.

3. Advance Notices:

Advance reservations must be made no later than the previous day of when service is to be rendered.

4. Waiting Times:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 15% of the shared ride rate (rounded upward to the nearest \$0.05); provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate under the provisions of Section 704, of Act 33 of 1981 (the Lottery Fund Preservation Act).

6. Contract Services:

Contract services provided will be for a term of not less than 30 days for nonqualified persons under a federal, state, county or municipal governmental agency contract. Rates for the services will be specified in the respective contracts, copies of which, including any amendments thereto, are to be filed with the Commission as executed, to become effective on one day's notice.

(C) Indicates change or addition

DISCUSSION AND FINDINGS

Norristown Transportation Company is a common carrier operating in Montgomery County, Maryland. The company is currently operating a route between Norristown and Washington, D.C. The route is operated on a daily basis and is subject to the regulations of the Federal Motor Carrier Safety Administration. The company has applied for a new route between Norristown and Washington, D.C. The route is proposed to be operated on a daily basis and is subject to the regulations of the Federal Motor Carrier Safety Administration. The company has provided evidence to support its application and has shown that it is qualified to operate the proposed route. The Commission has reviewed the evidence and has found that the company is qualified to operate the proposed route. The Commission has also found that the proposed route is in the public interest and that it should be granted. The Commission has issued an order granting the application and has set the route into effect.

The territory encompassed within a five (5) statute mile radius of the borough of Norristown includes the following boroughs and townships within Montgomery County: the boroughs of West Conshohocken, Conshohocken and Bridgeport and the townships of Whitetown, Norristown, Elkhart, Norcoast, Lower Providence, West Norristown, Upper Merion, Whitpain and Lower Merion.

Falling within five statute miles of the limits of Norristown are bridge areas of other townships in Montgomery County. Also included within five statute miles of the borough of Norristown is a small portion of Chester County. The application has been amended to exclude transportation to, from and between points in Chester County.

The area of application as amended has been supported by four (4) individuals, one (1) nursing care facility and one (1) Montgomery County coordinator that proposes to render applicant approximately twenty-one (21,000) paratransit trips on a return basis. We find that the application has been amply supported by the parties.

We find that:

1. Applicant currently operates pursuant to common carrier certificates issued by this Commission in 1969.

2. The application was opposed and the protest was withdrawn upon restrictive amendment.

3. Six supporting parties have demonstrated a need for the service as requested.

4. The applicant has the necessary equipment, experience and financial resources to render the requested service.

IT IS HEREBY ORDERED: That the above-named party shall be permitted to file a petition for writ of habeas corpus in the Circuit Court of the County of ...

IT IS FURTHER ORDERED: That upon compliance with the conditions set forth, a certificate shall issue by the Commission's approval of the right to practice as above provided.

BY THE COMMISSION,

John G. Alford
John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 16, 1997

ORDER ENTERED: JAN 20 1997

Certificate No. A.DC100317
Page 1

Paratransit - Pa. P.O.C. No. 4
Cancels
Paratransit - Pa. P.O.C. No. 3

CONSHOHOCKEN YELLOW CAB CO.

OFFICIALLY FILED TARIFF

RATES AND RULES
GOVERNING THE
TRANSPORTATION OF
(As Designated Herein)

ISSUED: January 29, 1967

EFFECTIVE: February 23, 1967

ISSUED BY: Francis J. Smith, President
41 Burnside Ave.
Marristown, Pa. 19401
Phone: (215) 377-1034

RECEIVED
PENNA. PUBLIC UTILITY COMM.
JAN 29 1967
Bureau of Transportation
File and Payment Section

LIST OF SERVICES TO BE PROVIDED BY THIS TARIFF.

General note: All rates are fractional and time rates are
as indicated.

OPERATING AUTHORITY - A. 19127, P. 2

To transport, as a common carrier, persons in paratransit
service, between points in the boroughs of Conshohocken
and West Conshohocken and the township of Whitmanah,
Montgomery County.

Subject to the following conditions:

1. That the service herein authorized is limited to transportation in vehicles having a seating capacity of not more than fifteen (15) persons, including the driver, without the use of dome lights and taximeters.
2. That the service herein authorized is limited to transportation in vehicles not reserved for individual use for which advance reservations are made not less than the previous calendar day.
3. That no right, power or privilege is granted to transport persons in group and party service, as defined in the Pennsylvania Code, Title 33, Chapter 28.16.
4. That no right, power or privilege is granted to provide scheduled route service as defined in the Pennsylvania Code, Title 33, Chapter 28.14.
5. That the equipment shall not be in all vehicles, either the equipment or persons when the authority held is available. The nature of the availability of the service shall be as and the tariff for such service. Notice shall be posted in a conspicuous place in the interior of the vehicle.

REGULATIONS

20. Miles up to and including eight (8) miles in any direction from the nearest garage or office and return:

14-passenger Vans, per mile, per Vehicle	\$ 11.00
8 to 13 passenger Vans, per mile, per Vehicle	10.00
Wheelchair Vans, per mile, per Vehicle	11.00

20. Miles beyond eight (8) miles in any direction from the nearest garage or office, and return:

14-passenger Vans, per mile, per Vehicle	\$ 11.15
8 to 13 passenger Vans, per mile, per Vehicle	10.00
Wheelchair Vans, per mile, per Vehicle	11.50

NOTES:

1. Mileage is calculated by the odometer of the vehicle used.
2. At least 24 hours advance notice must be given.
3. Rates are applicable seven (7) days a week, holidays included, between the hours of 7:00 A.M. and 10:00 P.M.
4. When hourly rates are charged there will be a one-hour minimum. Partial hours, after the first hour, will be calculated in quarter-hour intervals.
5. Contract services for a term not less than 30 days to provide the transportation requirements of pre-qualified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.
6. The total charges under this section are divisible by the number of persons carried per trip and are payable on a per person basis only.

SHARED RIDE RATES (PER PERSON)

1. Base Rates: (C)

Base rates are established and are listed below. (See Map). Rates range from \$1.00 to \$15.00 depending on the number of zones travelled (See Map for rates within each zone and between zones).

2. Days and Hours of Operation:

Service is available every day, holidays included, from 7:00 A.M. to 10:00 P.M.

3. Advance Notices:

Advance reservations must be made no later than the previous calendar day.

4. Waiting Times:

First five (5) minutes - no charge.
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

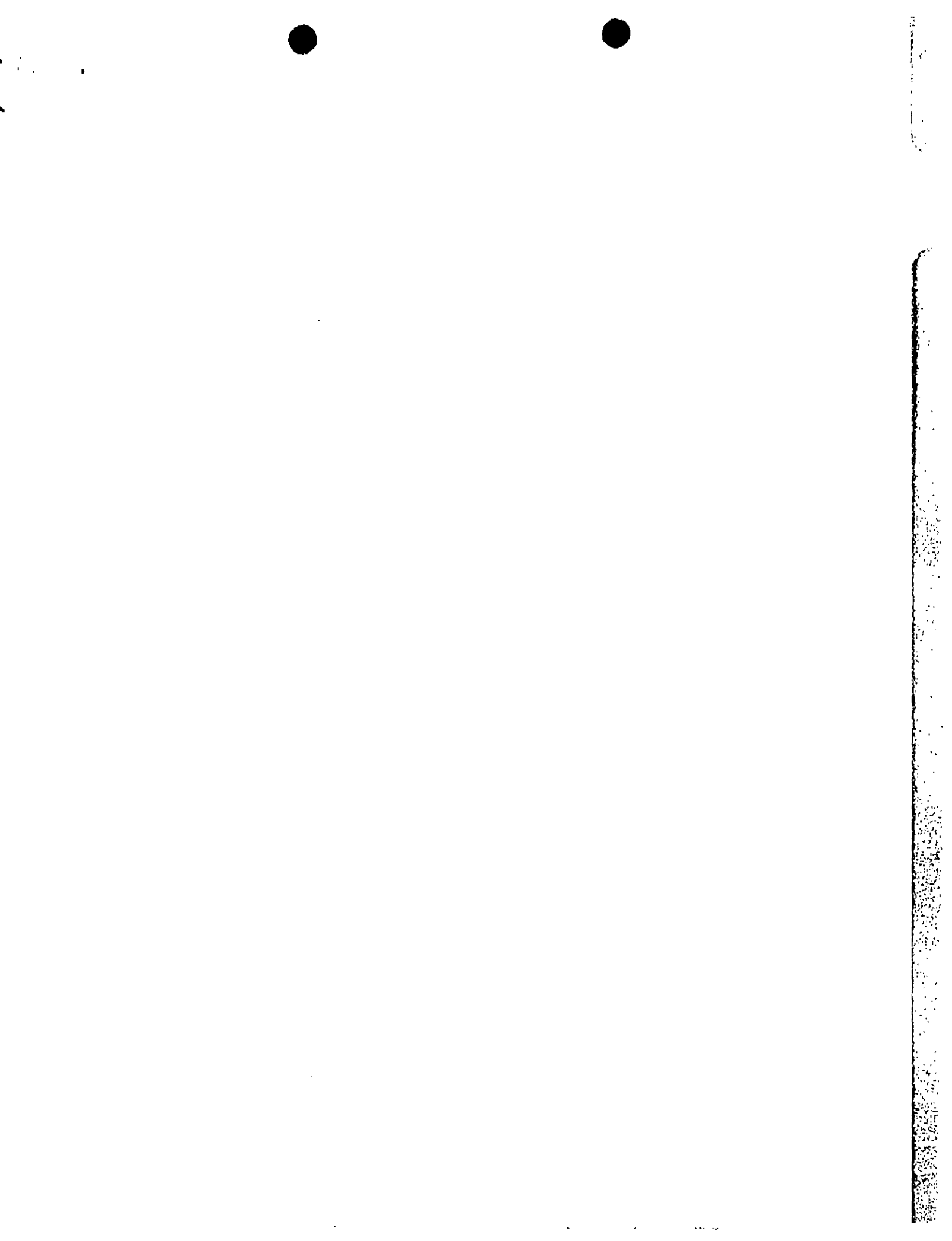
5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 5.00 or 10% of the shared ride rate (rounded to the nearest 5.00 or 5.00), whichever is greater; provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate in the senior citizen program under Section 203, Act 101 (1980), as amended by Act 49 (1984), amended by Act 49 (1984).

6. Contract Services: (C)

Contract services for a term of not less than 30 days, to provide the transportation requirements of prequalified persons under a Federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as a condition, and rates to become effective on the day's notice.

(C) Indicates change or addition



SEE TAB "B"

APPLICATION FOR APPROVAL OF TRANSFER
AND EXERCISE OF COMMON CARRIER OR CONTRACT RIGHTS

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MAIN LINE TRANSIT SERVICE, INC.
(Applicant/Transferee-Buyer)

for the approval of the transfer and to exercise the right

as a Common carrier, described at Docket
(common-contract)

No. A-00089018, Folder No. 2, Am-D, issued to

BENNETT TAXI SERVICE, INC.
(Transferor - Seller)

for transportation of Persons in paratransit service
(persons-household goods)

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. MAIN LINE TRANSIT SERVICE, INC.
(full and correct name of applicant/transferee)

2. MAIN LINE TRANSIT SERVICE, INC.
(Trade name, if any)

The trade name HAS been registered with the Secretary of the Commonwealth
(has or has not)

on June 14, 1996 (attach copy of stamped registration form).
(date)

3. 303 East Church Rd.
(Business street address) (P.O. Box, if any)

King of Prussia, Pennsylvania
(City) (County) (State) 19406 610-277-8536
(zip) (Telephone)

4. Applicant's attorney (for this application) is:
376 East Main Street
Thomas M. Keenan, Esc., P.O. Box 26460, Collegetown, PA 19426 - (610) 489-
(Name) (Address) (Telephone) 6170

Act 294 RECEIVED

00 FEB 25 AM 10:18

P.A.P.U.C.
SECRETARY'S BUREAU

Case Identification:

A-00116172; Application of
Main Line Transit Service,
Inc.

Initial Decision by:

DOCKETED
FEB 24 2000

ADJ Wayne L. Weismandel

Deadline for Return to OSA:

February 3, 2000

This decision has not been reviewed by OSA.

RECEIVED

**DOCUMENT
FOLDER**

JAN 24 2000

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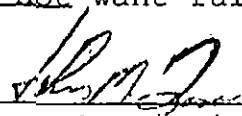
OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

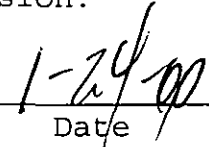
Commissioner

Date

I do not want full Commission review of this decision.



Commissioner



Date

EEF

Act 294

Case Identification: A-00116172; Application of
Main Line Transit Service,
Inc.

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: February 3, 2000

This decision has not been reviewed by OSA.

RECEIVED

FEB 01 2000

OFFICE OF SPECIAL ASSISTANTS

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Robert P. Brown

Commissioner

1/28/00

Date

Act 294

Case Identification: A-00116172; Application of
Main Line Transit Service,
Inc.

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: February 3, 2000

This decision has not been reviewed by OSA.

RECEIVED

FEB 24 2000

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Nora Mead Brownell

Commissioner

Feb 3, 2000

Date

Act 294

Case Identification: A-00116172; Application of
Main Line Transit Service,
Inc.

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: February 3, 2000

This decision has not been reviewed by OSA.

RECEIVED

FEB 3 2000

OFFICE OF SPECIAL
ASSISTANTS

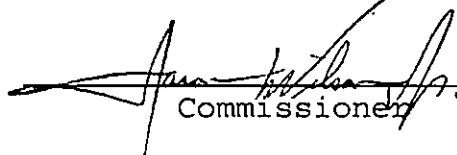
* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.



Commissioner

2/3/00

Date Sw

Act 294

Case Identification: A-00116172; Application of
Main Line Transit Service,
Inc.

Initial Decision By: ALJ Wayne L. Weismandel

Deadline for Return to OSA: February 3, 2000

This decision has not been reviewed by OSA.

RECEIVED

JAN 31 2000

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Terrance J. Fitzpatrick

Commissioner

1/24/00

Date

LAW OFFICES
JOHN J. GALLAGHER, P.C.

JOHN J. GALLAGHER
MICHAEL S. HENRY *
LAURA C. MULDOWNNEY *
LARISA TENBERG *
JOAN D. GALLAGHER *

SUITE 1100
1780 MARKET STREET
PHILADELPHIA, PA. 19103

(215) 963-1555
FAX (215) 963-9104

E-MAIL: john@gallagher-law.com

* ALSO MEMBER NJ BAR

June 30, 2000

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Mr. James McNulty, Secretary
P.O. Box 3265
Harrisburg, PA 17120

DOCKETED
JUN 30 2000
T2

RE: Application of Main Line Transit Service, Inc. – A-00116172

Dear Mr. McNulty:

Please withdraw the protest of Norristown Transportation Company in the above-referenced matter.

Thank you for your attention and consideration to this matter.

Very truly yours,

Larisa Tenberg
LARISA TENBERG

cc: Barnett Satinsky, Esquire
Thomas M. Keenan, Esquire

518202

RECEIVED
TRAINING & SAFETY

2000 JUL -5 PM 2:04

00 JUL -30 AM 8:08

RECEIVED
SECRETARY'S BUREAU

DOCUMENT
FOLDER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of §1.54 (relating to service by a participant).

Barnett Satinsky, Esquire
Fox, Rothchild, O'Brien & Frankel, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103

Thomas M. Keenan, Esquire
Keenan, Ciccitto & Brant
376 East Main Street
P.O. Box 19426
Collegeville, PA 19426

RECEIVED
TREASURY DEPARTMENT
2000 JUL -5 PM 2:04

Date: June 30, 2000

Larisa Tenberg
LARISA TENBERG, ESQUIRE

518203

00 JUL -30 AM 9:08
RECEIVED
SECRETARY'S BUREAU

ORIGINAL MEMO

PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

August 18, 2000

Subject: A-00116172; Application of Main Line Transit Service, Inc.

To: James J. McNulty
Secretary

From: Cheryl Walker Davis, Director
Office of Special Assistants

DOCKETED

AUG 31 2000

CWD

Re-Assign to
TAS
cc: OSA
8/30/00

Main Line Transit Service, Inc. (Applicant) filed the subject Application on August 5, 1999, requesting approval of the transfer and to exercise the right as a common carrier described at Docket No. A-0089018F0002, Am-D. Notice of the Application was published in the *Pennsylvania Bulletin*. On October 18, 1999, Norristown Transportation Company (Protestant) filed a protest against granting the Application.

On December 8, 1999, the Applicant filed and served a Motion to Dismiss the Protest (Motion). The Motion was assigned to Administrative Law Judge (ALJ) Wayne Weismandel. Applying the principles of the commission's preliminary motion practice (52 Pa. Code §5.101(a)(3)), the ALJ granted the Applicant's Motion and, therefore, dismissed the protest per Initial Decision issued on January 1, 2000. Protestant filed Exceptions on February 8, 2000. The Applicant filed Reply Exceptions.

The Exceptions were assigned to the Office of Special Assistants for consideration and recommendation for their disposition. However, per e-mail dated August 7, 2000 (attached), the attorney representing the Protestant withdrew the Exceptions as moot. Under the circumstances, it is clear that the subject Application is unopposed and, therefore, should proceed in accordance with the provisions of 52 Pa. Code §3.382(c)(1)(iii)(A) as an unopposed Application.

Should you have any questions, or need additional information, please contact Russel Albert of my staff at 787-8108.

Attachment

cc: Wendy Keezel
Bureau of Transportation & Safety

LAW OFFICES
JOHN J. GALLAGHER, P.C.JOHN J. GALLAGHER
MICHAEL S. HENRY *
LAURA C. MILDOWNNEY *
LARISA TENBERG *
JOAN D. GALLAGHER *SUITE 1100
1760 MARKET STREET
PHILADELPHIA, PA. 19104(215) 963-1555
FAX (215) 963-9104
E-MAIL:john@gallagher-law.com

* ALSO MEMBER IN BAR

August 7, 2000

Russel Albert
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
VIA FACSIMILE (717) 783-6324RE: Application of Main Line Transit Service, Inc.
A-00116172

Dear Mr. Albert:

As per our conversation, please withdraw Potestant Norristown Transportation Company's Exceptions because the issue is moot at this point.

Thank you for your attention to this matter.

Very truly yours,


LARISA TENBERG

COMMONWEALTH OF PENNSYLVANIA

DATE: August 30, 2000

SUBJECT: A-00116172

TO: Bureau of Transportation & Safety

FROM: James J. McNulty, Secretary

LAF

Application of Main Line Transit Service, Inc.

Per memo dated August 18, 2000, from Cheryl Walker Davis, Director of the Office of Special Assistants, the above-docketed application is being re-assigned to your Bureau for appropriate action.

DOCUMENT
FOLDER

laf

pc: OSA

DOCKETED
AUG 31 2000



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

October 30, 2000

R-16

BARNETT SATINSKY
MARI A LOVE ESQUIRES
2000 MARKET STREET 10TH FLOOR
PHILADELPHIA PA 19103

DOCKETED

Re: A-00116172 - Main Line Transit Service, Inc.

NOV 09 2000

Dear Mr. Satinsky and Ms. Love:

Under date of October 2, 2000, the Secretary's office transmitted to you the Commission's compliance order adopted September 28, 2000, evidencing approval of the above application which is in effect a transfer of the rights formerly held by Bennett Taxi Service, Inc. at A-00089018, F. The letter transmitting the order directs attention to the requirement for the filing of a tariff.

In this instance it is not possible to meet the tariff requirements by the adoption of the former tariff for the reason that the present tariff's description of operating authority does not conform with the approval of this application.

It will be necessary, therefore, to file new tariffs which should be designated Paratransit Pa. P.U.C. No.'s 1 and 2. The tariff should name the same rates, rules and regulations as were filed by the former operator and may be issued to become effective on one day's notice under authority of Pa. Code, Title 52, Section 23.42.

Very truly yours,

Monroe Dove

For Monroe Dove, Tariff Examiner
William Hoshour, Supervisor
Insurance/Filing Unit

cc: Document Folder A-00116172

MAIN LINE TRANSIT SERVICE INC
303 EAST CHURCH STREET
KING OF PRUSSIA PA 19406

Contact Person: M. Dove (717) 787-5945